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NEW YORK JOURNAL

W. R. HEARST

New York, January 10th, 1899.

Dear Sir:--

The NEW YORK JOURNAL has the pleasure of sending you, under separate cover, a complete report of the secret proceedings of the American Peace Commission in Paris, together with the Treaty in full--Spanish and English texts. The work of this Commission is of the greatest International importance, particularly to those who by virtue of official or editorial position are enabled to influence public opinion. THE JOURNAL will be very glad if this report, obtained by our correspondents abroad, and printed by us exclusively on January 1st, five days in advance of its official publication by the United States Government, should prove of value to you.

Yours very truly,



SECRET PROCEEDINGS OF THE
PEACE COMMISSION

OFFICIAL VERBATIM REPORT

IN SPANISH AND ENGLISH
OF EVERY SESSION
AND THE

Protocols and Treaty in Full

BETWEEN

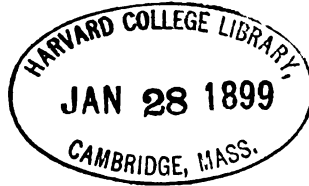
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The N. Y. Journal

Protocol No. 1.

CONFERENCE

Of October 1, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO.

There was present, as Secretary of the United States Commission, Mr. Moore, and as Interpreter of the same Commission, Mr. Fergusson.

Mr. Ojeda, Secretary of the Spanish Commission, not having arrived in Paris, his duties were, on motion of Mr. Montero Rios, the American Commissioners assenting, discharged by Mr. Villa-Urrutia.

The commissions and full power of the American Commissioners were exhibited to the Spanish Commissioners, and copies given to them.

The commission of the American Secretary was also exhibited, and a copy furnished to the Spanish Commissioners.

The commissions, which were also full powers, of the Spanish Commissioners were exhibited, and copies given to the American Commissioners.

It was resolved that the protocols of the conferences should be kept in English and in Spanish by the respective Secretaries, and that in the event of a disagreement between them it should be settled by the Commissioners, to whom the protocols should always be submitted for approval.

It was also resolved that the protocols should contain the propositions presented by the Commissioners and the action thereon, suppressing any record of the debates, in order that the discussions should be as full, frank and friendly as was desired by all the Commissioners.

The Spanish Commissioners moved that the Commissioners on either side should have the right to file memoranda on points deemed by them to be of sufficient importance to warrant such action. On this motion no decision was reached.

Upon the suggestion of Mr. Montero

PROTOCOLO NO. 1.

CONFERENCIA

Del 1 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO.

Asistían en calidad de Secretario de la Comisión de los Estados Unidos, encargado de la redacción inglesa del protocolo, Mr. Moore, y como Interpreté de dicha Comisión, Mr. Fergusson.

No habiendo aun llegado a Paris el Secretario de la Comisión española, Sr. Ojeda, se presto a hacer sus veces, por indicación del Señor Montero Rios y con el asentimiento de los Comisarios americanos, el Señor Villa-Urrutia.

Los nombramientos y plenipotencias de los Comisarios americanos fueron presentados a los Comisarios españoles a quienes se entregaron copias de los mismos.

También fue presentado el nombramiento del Secretario de la Comisión americana y hecha entrega de una copia de él.

Asimismo fueron presentados por los Comisarios españoles sus plenipotencias, de que se dieron copias a la Comisión americana.

Se convino en que las actas de la conferencia se redactasen en español e inglés por los respectivos Secretarios, y que cuando no hubiese entre ellos acuerdo, resolviere la conferencia, a cuya aprobación habían de ser siempre sometidas.

Se acordó también que endichas actas constasen las proposiciones que presentaran los Comisarios y los acuerdos que recayeran sobre las mismas, suprimiendo en cambio cuanto se refiriese a su discusión para permitir que esta fuera tan amplia, tan franca y tan amistosa como unos y otros Comisarios deseaban.

Los Comisarios españoles propusieron que los Comisarios de una u otra de las partes tuvieran el derecho de presentar memoranda sobre aquellos puntos que por su importancia entendieran que así lo requerían. No se decidió nada sobre este punto.

Indicada por el Señor Montero Rios la

Rios that an order of business be established by the Commission, Mr. Gray moved that a committee be appointed, to consist of a Commissioner on each side, to agree upon, frame, and submit to the conference rules of procedure for the guidance thereof. The motion being agreed to, Mr. Gray and Mr. Villa-Urrutia were designated as the committee, and requested to report to the conference at the next session, which it was resolved should be held on October 3, at 2 o'clock p. m.

The President of the Spanish Commission stated that he was charged by his Government to lay before the American Commissioners a proposition, in limine and of a pressing nature, which he presented in writing, and of which a copy and translation are hereto annexed. Mr. Day requested that it be read, which was done, the Interpreter translating it into English. Upon the conclusion of the reading Mr. Day said that the American Commissioners would examine the proposition and reply to it at the next session.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WM. P. FRYE,
GEO. GRAY,
WHITE LAW REID,
J. B. MOORE.

conveniencia de fijar el orden de los trabajos de la Comisión, propuso Mr. Gray el nombramiento de dos delegados en representación de cada una de las partes para que, puestos de acuerdo, redacten y sometan a la Conferencia las reglas de procedimiento a que esta deba ajustarse. Aprobada la proposición, fueron designados el Sr. Villa-Urrutia y Mr. Gray para la redacción del reglamento que habia de presentarse a la aprobación de la conferencia en su próxima sesión, acordándose que esta tuviera lugar el 3 de Octubre a las dos de la tarde.

El Presidente de la Comisión española manifestó que tenia encargo de su Gobierno de presentar a los Comisarios americanos como cuestión previa y de carácter urgente una moción que presento por escrito y cuya copia es anexa al protocolo. Mr. Day pidió que se diera de ella lectura y así lo hizo, traduciéndola al inglés el Interpreter. Terminada la lectura declaró Mr. Day que los Comisarios americanos estudiarían dicha moción y darían su respuesta en la sesión próxima.

Firmado. E. MONTERO RIOS,
B. DE ABARZUA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO.

ANNEX TO PROTOCOL NO. 1.

Los Comisarios españoles para convenir con los Senores Comisarios americanos un tratado de paz entre España y los Estados Unidos de América tienen el honor de hacer presente a los Senores Comisarios americanos lo siguiente:

Habiéndose convenido en el artículo 6 del protocolo firmado en Washington el 12 de Agosto último por el Señor Ministro de Estado del Gobierno federal y el Señor Embajador de Francia en concepto de Plenipotenciario de España en que "al concluirse y firmarse aquel documento deberían ser suspendidas las hostilidades entre los dos países;" y siendo de este convenio inmediata y necesaria consecuencia que el statu quo existente en aquel momento en Filipinas no había de poder alterarse en perjuicio de ninguna de las dos Altas Partes contratantes mientras hubiera de durar tal suspensión de hostilidades, los Comisarios españoles entienden que habiendo de ser el sobredicho Protocolo y su estricta observancia la base necesaria del tratado de paz que están llamados a convenir con los Senores Comisarios americanos, están en el caso de proponer y demandar a dichos Senores Comisarios que juntamente con los infrascritos se sirvan declarar que dicho statu quo debe ser inmediatamente restablecido por la parte contratante que lo haya alterado o que haya consentido o no impedido su alteración en perjuicio de la otra.

Yentendiendo los Comisarios españoles que tal statu quo fue alterado y continúa cada día con mayor gravedad alterándose en perjuicio de España por los rebeldes tagalos que formaron durante la campaña y continúan formando una fuerza auxiliar de las tropas regulares americanas, demandan a los Senores Comisarios americanos que juntamente con los infrascritos se sirvan declarar que las autoridades y jefes de las fuerzas americanas en las Islas Filipinas deben proceder inmediatamente a restablecer en su estricta y absoluta integridad aquel statu quo en los territorios que ocupen y se abstengan de impedir por ningún medio directo ni indirecto que las autoridades y fuerzas españolas lo restablezcan en los territorios que no ocupan las de los Estados Unidos.

Los Comisarios españoles se reservan volver a insistir sobre este asunto así como sobre los derechos que a España pudieran corresponder por efecto de la indicada alteración que ha sufrido y puede continuar sufriendo en Filipinas el Statu quo del 12 de Agosto último hasta su restablecimiento.

Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

(Annex to Protocol No. 1.)

The Spanish Commissioners to arrange with the American Commissioners a treaty of peace between Spain and the United States of America, have the honor to lay before the American Commissioners the following:

It having been agreed by Article VI. of the Protocol signed in Washington on August 12 last by the Secretary of State of the Federal Government and the Ambassador of France acting as Plenipotentiary of Spain that "upon the conclusion and signing of this Protocol hostilities between the two countries shall be suspended;" and it being a direct and necessary consequence of this arrangement that the statu quo at the time existing in the Philippines could not be altered to the prejudice of the two High Contracting Parties during the continuance of such suspension of hostilities, the Spanish Commissioners, understanding that the Protocol aforesaid and its observance must be the necessary basis of the treaty of peace they are called upon to arrange with the American Commissioners, feel bound to propose and demand of the said Commissioners that jointly with the undersigned they be pleased to declare that the said statu quo must be immediately restored by the contracting party that may have altered the same, or that may have consented to or failed to prevent its alteration to the prejudice of the other.

And the Spanish Commissioners, understanding that such statu quo was altered and continues being altered with daily increasing gravity to the prejudice of Spain by the Tagalo rebels, who formed during the campaign and still form an auxiliary force to the regular American troops, demand of the American Commissioners that jointly with the undersigned they be pleased to declare that the authorities and officers of the American forces in the Philippine Islands must at once proceed fully and absolutely to restore the said statu quo in the territories they may occupy, and must abstain from preventing, by any means, direct or indirect, the restoration thereof by the Spanish authorities and forces in the territory not occupied by those of the United States.

The Spanish Commissioners reserve the right to insist again upon this matter as well as upon the rights that may attach to Spain through the effect of the said alteration which the statu quo of August 12 last has suffered or may continue to suffer in the Philippines until its restoration.

True copy:

EMILIO DE OJEDA.

**COMMISSIONS AND FULL POWERS
REFERRED TO IN THE FOREGOING PROTOCOL.**

Commissions of American Plenipotentiaries.

WILLIAM M'KINLEY, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

Know Ye! That, reposing special trust and confidence in the Integrity and Ability of William R. Day, of Ohio, I do appoint him a Commissioner Plenipotentiary of the United States, under the Protocol signed at Washington of the twelfth day of August, 1898, to negotiate and conclude a Treaty of peace between the United States and Spain, and do authorize and empower him to execute and fulfil the duties of this Commission, with all the powers, privileges, and emoluments thereunto of right appertaining, during the pleasure of the President of the United States.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington the 13th day of September in the year of Our Lord one thousand eight hundred and ninety-eight, and the 123d year of the Independence of the United States of America.

Signed: **WILLIAM M'KINLEY.**

By the President:

Signed: **J. B. MOORE.**

Acting Secretary of State.

The commissions of the other American Plenipotentiaries were in the same form, their names being as follows:

CUSHMAN K. DAVIS, of Minnesota,

WILLIAM P. FRYE, of Maine,

GEORGE GRAY, of Delaware, and

WHITELAW REID of New York.

Full Power of American Plenipotentiaries.

WILLIAM M'KINLEY, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

Know Ye! That, reposing special trust and confidence in the Integrity and Ability of the Honorable William R. Day, of Ohio, lately Secretary of State of the United States; the Honorable Cushman K. Davis, of Minnesota, a Senator of the United States; the Honorable William P. Frye, of Maine, a Senator of the United States; the Honorable George Gray, of Delaware, a Senator of the United States, and the Honorable Whitelaw Reid, of New York, lately Minister Plenipotentiary of the United States to France, I do appoint them jointly and severally to be Commissioners on the part of the United States under the Protocol signed at Washington on the twelfth day of August, 1898, to negotiate and conclude a Treaty of peace between the United States and Spain, hereby empowering them jointly and severally to meet the Commissioners appointed or to be appointed under said Protocol on behalf of Spain, and with them to negotiate and sign a Treaty of peace between the United States and Spain, subject to the ratification of their Government; and the said commission to hold and exercise during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington this 13th day of September, in the year of Our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

Signed: **WILLIAM M'KINLEY.**

By the President:

Signed: **J. B. MOORE,**

Acting Secretary of State.

COMMISSIONS AND FULL POWERS OF SPANISH PLENIPOTENTIARIES.

DON ALFONSO XIII. por la gracia de Dios y la Constitución Rey de España y en su nombre y durante su menor edad DONA MARIA CRISTINA, Reine Regente del Reino:

Por cuanto ha llegado el caso de celebrar entre España y los Estados Unidos de América un tratado de paz; siendo necesario que al efecto autorice Yo debidamente a personas que merezcan Mi Real confianza y concurriendo en Vos, Don Eugenio Montero Rios, Caballero de la Insigne Orden del Toison de Oro, condecorado con el Collar de la Real y distinguida orden de Carlos III., Presidente del Senado, ex-ministro de la Corona, ex-presidente del Tribunal Supremo de Justicia, Académico de la de Ciencias Morales y Políticas, las circunstancias que a este fin pueden apertecerse; por tanto, he venido en elegir y nombraros, como por la presente os elijo y nombro para que, en cumplimiento de lo estipulado en el artículo quinto del Protocolo firmado en Washington el día doce del mes de Agosto último y revestido del carácter de Mi Plenipotenciario, conferenciéis y convengáis lo más acertado y oportuno, en unión de los demás Plenipotenciarios que, con esta misma fecha, nombro, y con los que designe al propio objeto el Presidente de los Estados Unidos. Y todo lo que así conferenciéis, convengáis, tratéis, concluyáis y firméis lo doy desde ahora por grato y rato, lo observar y cumplir, lo hare observar y cumplir como si por Mi misma lo hubiere conferenciado, convenido, tratado, concluido y firmado, para la cual os doy Mi pleno poder en la más amplia forma que de derecho se requiera. Y en fe de ello, He hecha expedir la presente firmada d M mano, debidamente sellada y refrendada del infrascrito Mi ministro de Estado. Dado en el Palacio de Madrid a veintidos de Septiembre de mil ochocientos noventa y ocho Firmado: MARIA CRISTINA.

El Ministro de Estado,

Firmado: Juan Manuel Sanchez y Gutierrez de Castro.

TRANSLATION.

DON ALFONSO XIII., BY THE GRACE OF GOD AND THE CONSTITUTION KING OF SPAIN, AND IN HIS NAME AND DURING HIS MINORITY, DONA MARIA CRISTINA, QUEEN REGENT OF THE KINGDOM:

Whereas the occasion has arisen for the concluding between Spain and the United States of America of a Treaty of peace, and it being necessary that to such end I should duly confer authority upon persons who shall merit my royal confidence, and you, Don Eugenio Montero Rios, Knight of the Worthy Order of the Golden Fleece, decorated with the Collar of the Royal and distinguished Order of Charles III., President of the Senate, ex-Minister of the Crown, ex-President of the Supreme Tribunal of Justice, Academician of the Moral and Political Sciences, embody the characteristics which meet the requirements of the case, I have therefore chosen and appointed, and by these presents do choose and appoint you to the end that, pursuant to the stipulations of Article V. of the Protocol signed in Washington of the twelfth day of the month of August last, and invested with the character of my Plenipotentiary, you may in unison with the other Plenipotentiaries I have appointed under this date and those who may be designated by the President of the United States for the same purpose, confer and agree upon what may be best and most advisable. And everything you may so confer and agree upon, negotiate, conclude and sign, I now confirm and ratify, I will observe and execute, will cause to be observed and executed, the same as if I myself had conferred and agreed upon, negotiated concluded and signed it, for all of which I confer upon you ample authority to the fullest extent required by law. In witness thereof I have caused these present to issue signed by my hand, duly sealed and attested by the undersigned, my Minister of State.

Given in the Palace of Madrid on the twenty-second day of September of eighteen hundred and ninety-eight. Signed: MARIA CRISTINA.

Signed: JUAN MANUEL SANCHEZ Y GUTIERREZ DE CASTRO.

Minister of State.

The commissions and full powers of the other Spanish Plenipotentiaries were in the same form, their names and titles being as follows:

Don BUENAVENTURA ABARZUZA, Senator of the Kingdom and sometime Ambassador and Minister of the Crown;

Don JOSE DE GARNICA Y DIAZ, Associate Justice of the Supreme Court of Justice, Deputy of the Cortez, Member of the General Codification Commission, ex-Vice-President of the Congress of Deputies;

Don WENCESLAO RAMIREZ DE VILLA-URRUTIA, Knight Grand Cross of the Royal Order of Isabel the Catholic, Knight Commander of the Royal and Distinguished Order of Charles III., decorated with the White Cross of the second class of Naval Merit, Grand Cross of the Dutch Lion of the Netherlands, Oak Crown of Luxemburg, the Majidleh of Turkey, Knight Commander of the Legion of Honor of France, of the Concepcion de Villaviciosa of Portugal, decorated with the Cross of the second class of the Bust of Bolivar, Knight of St. Maurice and St. Lazarus of Italy, of the Crown of Prussia, of the Crown of Christ of Portugal, Licentiate in civil and canonical law, and through competitive examination in administrative law Academician Professor of the Royal Academy of Jurisprudence and Legislation, my Minister Plenipotentiary to His Majesty the King of the Belgians:

Don RAFAEL CERERO Y SAENZ, General of Division, Ranking General of Engineers of the First Army Corps, Knight of the Grand Cross of the orders of San Hermenegildo and of Military Merit, white insignia; decorated with the Cross of the third class of the Order of Military Merit, red insignia.

Commission of American Secretary.

WILLIAM M'KINLEY, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

Know Ye! That, reposing special trust and confidence in the Integrity and Ability of John Bassett Moore, of New York, I do appoint him Secretary and Counsel to the Commissioners of the United States appointed under the Protocol signed at Washington on the twelfth day of August, 1898, to negotiate and conclude a Treaty of peace between the United States and Spain, and do authorize and empower him to execute and fulfill the duties of this Commission, with all the powers, privileges, and emoluments thereunto of right appertaining, during the pleasure of the President of the United States.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the 13th day of September in the year of Our Lord one thousand eight hundred and ninety-eight, and the 123rd year of the Independence of the United States of America.

Signed: WILLIAM M'KINLEY.

By the President:

Signed: WILLIAM R. DAY,
Secretary of State.

Protocol No. 2.

CONFERENCE

of October 3, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO.

The protocol of the preceding session was read and approved.

Messrs. GRAY and VILLA-URRUTIA, as a committee on procedure, reported that they had, after conferring together, decided that it was not advisable at present to recommend the adoption of any rules in addition to those already determined upon or still under discussion.

The question of annexing to the protocol memoranda on points of importance was then discussed.

The Spanish Commissioners proposed that the Commissioners on either side should have the privilege of filing memoranda on points which they should deem to be of sufficient importance to justify such action, the memoranda so filed to be annexed to the protocols.

The American Commissioners proposed that the right should be reserved to the Commissioners on either side to present memoranda on points which they might deem of sufficient importance to justify them in so doing, the question of annexing such memoranda to the protocol to be determined in each case by the Joint Commission.

No agreement having been reached, it was decided to refer the matter to the Secretaries for their consideration and adjustment, subject to the further action of the Commission.

The American Commissioners then read their reply to the communication presented by the Spanish Commissioners at the first conference in relation to the preservation of the statu quo in the Philippines. A copy of the reply is hereto annexed.

Protocolo No. 2.

CONFERENCIA

Del 3 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO.

El protocolo de la sesion anterior fue leído y aprobado.

Los Senores Gray y Villa Urrutia como ponentes para formular las reglas de procedimiento, manifestaron que despues de haber conferenciado, habian decidido que no creian por ahora necesario recomendar que se adoptaran otras reglas adicionales a las acordadas anteriormente y que aun se hallaban sujetas a debate.

Se discutió la cuestion de unir como anexos al protocolo los Memorandums relativos a asuntos de importancia.

Los Comisionados espanoles propusieron que los de ambas Partes tuvieran facultad de presentar Memorandums sobre los puntos que creyeran de bastante importancia para justificar tal determinacion y que los Memorandums formasen parte del protocolo como anexos al mismo.

Los Comisionados americanos propusieron que se deberia reservar a los Comisionados de ambas Partes este derecho de presentar Memorandums sobre puntos que se juzgasen de bastante importancia para hacerlo así; pero que la cuestion de unir tales Memorandums al protocolo se resolveria en cada caso por la Comision en pleno.

No habiendose llegado a un acuerdo, se decidió encomendar el asunto al estudio y resolucion de los Secretarios, salvo la aprobacion posterior de la Comision.

The Spanish Commissioners reserved the right to put in an answer to the reply at the next session.

The Spanish Commissioners then asked for the opinion of the American Commissioners on the order of business.

The American Commissioners stated that they were ready with propositions as to matters determined by the protocol.

The Spanish Commissioners said they were ready to receive them.

The propositions, as hereto annexed, were then read, and a copy of them handed to the Spanish Commissioners.

After the reading was completed, the Spanish Commissioners stated that they desired to examine the paper, and, if necessary, present amendments, and moved that an adjournment be taken until Friday.

After discussion, it was agreed to adjourn to two o'clock p. m., on Friday, October 7.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WILLIAM P. FRYE.
GEO. GRAY.
WHITELAW REID.
J. B. MOORE.

Los Comisionados americanos leyeron luego su contestacion a la comunicacion presentada por los Comisionados espanoles en la primera conferencia relativa a la conservacion del statu quo en las Islas Filipinas. Una copia de la contestacion se acompaña anexa a esta acta.

Los Comisionados espanoles proponen luego a los Comisionados americanos que expongan su opinion acerca del orden que se seguira en los trabajos de la conferencia.

Los Comisionados americanos manifiestan que tienen preparadas proposiciones sobre asuntos determinados por el Protocolo.

Los Comisionados espanoles dicen que estan preparados para recibirlos.

Las proposiciones que se incluyen anexas son leidas dandose copias de ellas a los Comisionados espanoles.

Despues de terminada la lectura los Comisionados espanoles manifiestan que desean examinar el documento, y si lo creen necesario presentar enmiendas, y proponen que se aplaze la sesion hasta el viernes.

Despues de haberse discutido esto, se convino en levantar la sesion hasta las dos de la tarde del viernes 7 de Octubre.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.

Annex 1 to Protocol No. 2.

The American Commissioners, having duly considered the communication made to them in writing by the Spanish Commissioners at their conference on the 1st instant, made the following answer:

The American Commissioners concur in the opinion, which that communication is understood to convey, that the Protocol of August 12, 1898, embodies the conditions on which negotiations for peace have been undertaken.

But in the proposal and demand of the Spanish Commissioners that the American Commissioners join them in a declaration that the statu quo existing at the time of the signature of the Protocol "must be immediately restored by the contracting party that may have altered the same, or that may have consented to or failed to prevent its alteration to the prejudice of the other, as well as in the demand of the Spanish Commissioners that the American Commissioners join them in the declaration that the American authorities in the Philippines shall proceed to restore or else refrain from interfering with the effort of Spain to restore the statu quo understood by the Spanish Commissioners to have been disturbed by the Tagalo rebels, who are described as an auxiliary to the American forces, the American Commissioners can see nothing but a proposal and demand to divert the conference from the object for which it has met to the consideration of a subject which properly belongs to the two Governments, and not to the Commissioners here assembled. The American Commissioners do not intend to intimate that the proposal was made with this design, but they think it evident that this would be the necessary result of its discussion.

The topics embraced in the communication of the Spanish Commissioners were set forth in much detail in notes of the French Embassy in Washington to the Department of State of the United States of August 29, and September 3 and 11. To these notes the Department of State replied on September 3 and 16. An examination of these diplomatic papers will show that they embraced contested matters of fact as well as contested matters of law. In respect of some of the questions of fact, it is probable that neither Government at present possesses full and accurate information; while, in respect of other questions of fact, the reports in the possession of the Spanish Government were so entirely at variance with authentic information in the possession of the United States as to compel the conclusion that at least some of these reports were not of an official character. In respect of questions of law, the views of the two Governments were also at variance.

The American Commissioners, therefore, with a view to prevent the diversion and failure of the present negotiations, as well as on the ground of a want of power, deem themselves obliged to reply that the questions involved in the present proposals and demands of the Spanish Commissioners having heretofore been presented to the Government of the United States and answered in notes of the Department of State, any further demands as to military operations in the Philippines must be addressed by the Government of Spain to the Government of the United States at Washington, and consequently that they cannot join in the proposed declarations.

True copy:

J. B. MOORE.

Annex 2 to Protocol No. 2.

In entering upon negotiations for a treaty of peace, the natural procedure is to follow the order of the topics in the Protocol of August 12, 1898, by which the United States and Spain agreed upon the terms on which they would enter upon the present negotiations.

By Article I of the Protocol, Spain agrees to "relinquish all claim of sovereignty over and title to Cuba."

With a view to the immediate execution of this engagement, steps have already been taken for the evacuation of the island, as provided by the Protocol.

Only one thing remains to complete the legal formalities of the transaction, and that is to embody in a treaty of peace an appropriate stipulation by which Spain relinquishes, according to the engagements of the Protocol, all claim of sovereignty and title.

The American Commissioners therefore propose, as a part of the treaty of peace, the following article:

"The Government of Spain hereby relinquishes all claim of sovereignty over and title to Cuba."

"In this relinquishment of sovereignty and title is included all claim to the public domain, lots and squares, vacant lands, public buildings, fortifications and the ar-

maments thereof, and barracks and other structures which are not private individual property. The archives, state papers, public records, and all papers and documents relative to the domain and sovereignty of the island and necessary or convenient for the government thereof, including all judicial and legal documents and other public records necessary or convenient for securing to individuals the titles to property or other rights, are embraced in the foregoing relinquishment; but an authenticated copy of any of them that may be required will be given at any time to such officer of the Spanish Government (as) may apply for it. The Government of Spain will likewise furnish an authenticated copy of any paper, record or document in the Spanish archives, home or colonial, or in the possession of the Spanish tribunals, home or colonial, relative to the domain and sovereignty of the island and necessary or convenient for the government thereof, or necessary or convenient for securing to individuals the titles to property or other rights."

By Article II of the Protocol, Spain agrees to "cede to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrões, to be selected by the United States."

The Government of the United States having selected in the Ladrões the Island of Guam, the American Commissioners propose as the next article of the treaty of peace the following stipulation:

"The Government of Spain hereby cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also the Island of Guam, in the Ladrões.

"In this cession is included all right and claim to the public domain, lots and squares, vacant lands, public buildings, fortifications and the armaments thereof, and barracks and other structures which are not private individual property. The archives, state papers, public records, and all papers and documents relative to the domain and sovereignty of the islands and necessary or convenient for the government thereof, including all judicial and legal documents and other public records necessary or convenient for securing to individuals the titles to property or other rights, are embraced in the foregoing cession; but an authenticated copy of any of them that may be required will be given at any time to such officer of the Spanish Government as may apply for it. The Government of Spain will likewise furnish an authenticated copy of any paper, record or document in the Spanish archives, and home or colonial, or in the possession of the Spanish tribunals, home or colonial, relative to the domain and sovereignty of the islands and necessary or convenient for the government thereof, or necessary or convenient for securing to individuals the titles to property or other rights."

True copy:

J. B. MOORE.

Protocol No. 3.

CONFERENCE

of October 7, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO-RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO.

Mr. Ojeda, having exhibited his commission and furnished a copy of it, assumed the duties of Secretary of the Spanish Commission.

The protocol of the preceding session was read and approved.

On the question of procedure referred to them at the last conference, the Secretaries made the following report:

"Where a proposition is presented and rejected, the side presenting it shall have the right to file a brief memorandum giving its reasons in support of such proposition, and the other side shall have the right to file a brief reply, the written discussion to be confined to such memorandum and reply, which are to be annexed to the protocol."

This report was adopted by unanimous consent.

The Spanish Commissioners then presented, in pursuance of the reservation made by them at the last conference, a reply to the American answer on the subject of the statu quo in the Philippines, at the same time stating that the reply was presented for the purpose of reserving the right to bring up the subject hereafter.

The reply was received and filed; copy and translation are hereto annexed.

The Spanish Commissioners then presented, as an amendment to the American proposals, a set of articles, in Spanish, copy and translation of which are hereto annexed, in relation to Cuba and Porto Rico.

The American Commissioners, in order to afford opportunity for the translation and consideration of the articles, moved that the conference be adjourned till Tuesday, October 11, at two o'clock p. m.

Protocolo No. 3.

CONFERENCIA

Del 7 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO.

El Sr. Ojeda despues de haber presentado su nombramiento y dado copia de el. actuo en calidad de Secretario de la Comision espanola.

Se leyo y aprobo el acta de la sesion anterior.

Respecto del procedimiento que habia de adoptarse y que en la ultima sesion se dejo a cargo de los Secretarios, estos informaron haber llegado al acuerdo siguiente:

"Siempre que una proposicion sea presentada y rechazada, la parte que la haya presentado tendra el derecho de anadir un breve memorandum en que se expresen las razones on que aquella se funda, y la parte tendra el derecho de contestar en forma breve, limitandose dicha discusion por escrito al citado memorandum y contestacion qui iran anexos al acta."

El acuerdo anterior fue unanimemente aprobado.

Los Comisarios espanoles presentan en virtud de la reserva que hicieron en la ultima conferencia una contestacion a la comunicacion de los Comisarios americanos relativa al statu quo en Filipinas, manifestando al mismo tiempo que el objeto de dicha contestacion era el de reservar el derecho de promover este asunto ulteriormente.

Dicho documento fue debidamente recibido y su copia y traduccion figuran como anexos al acta presente.

Los Comisarios espanoles presentan a continuacion, como enmienda a las proposiciones de los americanos, el articulado que va adjunto, relativo a Cuba y Porto Rico.

Los Comisarios Americanos, a fin de disponer del tiempo necesario para la traduccion y consideration de dicho articulado, propusieron que la conferencia fuese aplazada hasta el martes 11 de Octubre.

The conference was adjourned accordingly.

Signed: WILLIAM. R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

Se aprobo este acuerdo y se aplazo la proxima sesion hasta el dia 11 de Octubre a las 2 p. m.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

Annex 1 to Protocol No. 3.

COMISION

Para la Negociacion de la Paz con los Estado Unidos.

PROPOSICION.

No. 2 (a).

Los Comisarios espanoles se han enterado, con la detencion que requiere la importancia del asunto, de la contestacion escrita en que los Comisarios americanos se niegan a aceptar la proposicion que los Espanoles habiamos presentado en la sesion celebrada por los unos y los otros en 1º del corriente, para que se declarase por la Conferencia, en pleno, que debia restablecerse el statu quo en Filipinas existente en 12 de Agosto ultimo, en que se concluyo y firmo en Washington el Protocolo, cuyo articulo 6º contiene el acuerdo de suspender las hostilidades entre los dos paises.

Vista esta contestacion, los Comisarios espanoles entienden que es de su deber hacer presente a los Senores Comisarios americanos, que si el statu quo existente en Filipinas en 12 de Agosto ultimo, lejos de restablecerse continua perturbandose cada vez mas, en perjuicio de Espana, el Gobierno de Su Majestad Catolica y en su nombre sus Plenipotenciarios en esta Conferencia, se reservan proveer, a lo que entiendan que exige el derecho de Espana, una vez que no conciben como ha de poder celebrarse el tratado de paz que estan encargados de convenir con los Senores Comisarios americanos sobre la indeclinable base del Protocolo de Washington de 12 Agosto ultimo, si esta base se esta alterando constantemente en una de sus partes y cada dia en mayor perjuicio de Espana.

Paris, 7 de Octubre de 1898.

Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

Annex 1 to Protocol No. 3.

PROPOSITION.

No. 2 (a).

With the careful consideration the subject demands, the Spanish Commissioners have informed themselves of the written reply in which the American Commissioners decline to accept the proposition which the Spaniards presented at the session held by both Commissions on the 1st instant, to the effect that the joint body declare that the statu quo existing in the Philippines on the 12th of August last, date of the concluding and signing in Washington of the Protocol, Article VI. of which contains the agreement to suspend hostilities between the two countries, should be restored.

In view of this reply, the Spanish Commissioners understand that it is their duty to make known to the American Commissioners that if the statu quo existing in the Philippines on August 12 last, far from being restored, continues to be disturbed to the prejudice of Spain, the Government of Her Catholic Majesty, and in her name its plenipotentiaries in this conference, reserve the right to act as they may deem the rights of Spain shall require, since they cannot conceive how the treaty of peace they are charged with arranging with the American Commissioners upon the immutable basis of the Protocol of Washington of August 12 last, can be concluded if this basis is being constantly altered in one of its parts, and continually to the greater prejudice of Spain.

True copy:

EMILIO DE OJEDA.

Annex 2 to Protocol No. 3.

COMISION

Para la Negociacion de la Paz con los Estados Unidos.

ARTICULO 1.

Su Majestad la Reina Catolica, en nombre y representacion de Espana y constitucionalmente autorizada por las Cortes del Reino, renuncia a su soberania sobre la Isla de Cuba, transfiriendola a los Estados Unidos de America, que la aceptan, para que puedan a su vez transferirla oportunamente al pueblo cubano con las condiciones establecidas en este tratado, ofreciendo los Estados Unidos que desde su ratificacion seran siempre y fielmente cumplidas.

ARTICULO 2.

La renuncia y transferencia que hace Su Majestad Catolica y que aceptan los Estados Unidos de America comprende:

1. Todas las prerrogativas, atribuciones y derechos que, como parte integrante de dicha soberania, corresponden a Su Majestad Catolica sobre la Isla de Cuba y sus habitantes;

2. Todas las cargas y obligaciones de todas clases, pendientes al ratificarse este tratado de paz, que la Corona de Espana y sus autoridades en la Isla de Cuba hubiesen contraido legalmente en el ejercicio de la soberania que renuncian y transfieren, y que, en tal concepto, forman parte integrante de la misma.

ARTICULO 3.

En cumplimiento de lo convendio en los dos articulos anteriores, Su Majestad Catolica, en la representacion con que celebra este tratado, renuncia y transfiere a los Estados Unidos, que las aceptan, en el concepto sobredicho, todos los edificios, muelles, cuarteles, fortalezas, establecimientos, vias publicas y demas bienes inmuebles que, con arreglo a derecho, son de dominio publico, y que como de tal dominio publico, corresponden a la Corona de Espana en la Isla de Cuba.

Quedan por lo tanto exceptuados de esta renuncia y transferencia todos los bienes inmuebles radicantes en la Isla de Cuba que correspondan en el orden civil al Estado, en concepto de su propiedad patrimonial, asi como todos los derechos y bienes de cualquiera clase que sean, que, hasta la ratificacion del presente tratado, hayan venido pacificamente poseyendo, en concepto de dueños, las Provincias, Municipios, Establecimientos publicos o privados, Corporaciones eclesiasticas o civiles y cualesquiera otras colectividades que tengan legalmente personalidad juridica para adquirir y poseer bienes en la Isla de Cuba, y los particulares, cualquiera que sea su nacionalidad.

Su Majestad Catolica renuncia tambien, y transfiere a los Estados Unidos, a quien se le entregaran por el Gobierno espanol, todos los documentos y titulos que se refieran exclusivamente a la soberania transferida y aceptada, que existan en los Archivos de la Peninsula. Habiendo de facilitarle copias cuando los Estados Unidos las reclamasen, de la parte correspondiente a dicha soberania que contengan los demas documentos y titulos tambien relativos a otros asuntos ajenos a la Isla de Cuba, que existan en los mencionados Archivos. Una regla analoga habra reciprocamente de observarse, a favor de Espana, respecto a los documentos y titulos ajenos en todo o en parte a la Isla de Cuba que se hallen actualmente en sus Archivos y que interesen al Gobierno espanol.

Todos los Archivos y Registros oficiales, asi administrativos como judiciales, que estan a disposicion del Gobierno de Espana y de sus autoridades en la Isla de Cuba, y que se refieran a la misma Isla o a sus habitantes y a sus derechos y bienes, que daran a disposicion de los Estados Unidos con los mismos derechos y obligaciones con que hoy lo estan a disposicion del Gobierno espanol y de dichas sus autoridades. Los particulares, asi espanoles como cubanos, tendran derecho a sacar, con arreglo a las leyes, las copias autorizadas de los contratos, testamentos y demas documentos que forman parte de los protocolos notariales o que se custodien en los Archivos administrativos y judiciales, bien estos se hallen en Espana o en la Isla de Cuba.

ARTICULO 4.

Para fijar las cargas y obligaciones de todas clases, que la Corona de Espana cede y transfiere como parte de su soberania sobre la Isla de Cuba a los Estados Unidos, y que estos aceptan, se atendera a las dos reglas siguientes:

Primera: Las cargas y obligaciones que han de transferirse, han de haber sido establecidas en forma constitucional y en uso de sus legitimas atribuciones, por la Corona de Espana, como soberana de la Isla de Cuba, o por sus autoridades legitimas usando de las suyas respectivas, antes de la ratificacion de este tratado.

Segunda: Su creacion o constitucion ha de haber sido para el servicio de la Isla de Cuba o con cargo a su Tesoro especial.

ARTICULO 5.

En virtud de lo dispuesto en el articulo anterior quedan comprendidos en la sobredicha transferencia, las deudas cualquiera que sea su clase, cargas de justicia, sueldos o asignaciones de funcionarios asi civiles como eclesiasticos, que hayan de continuar prestando sus servicios en la Isla de Cuba, y pensiones de jubilacion y retiro y de viudedad u horfandad con tal que en todas ellas concurran las dos circunstancias prescritas en el articulo anterior.

ARTICULO 6.

Su Majestad Catolica, en nombre y representacion de Espana, y constitucionalmente autorizada por las Cortes del Reino, cede a los Estados Unidos de America y estos aceptan para si mismos, la soberania sobre la Isla de Puerto Rico y las demas que corresponden en la actualidad a la Corona de Espana en las Indias Occidentales.

ARTICULO 7.

Esta cesion de la soberania sobre el territorio y habitantes de Puerto Rico y las demas islas mencionadas se entiende que consiste en la cesion de los derechos y obligaciones, bienes y documentos relativos a la soberania de dichas islas, iguales a los que respecto a la renuncia y transferencia de la soberania de la Isla de Cuba, se definen en los articulos 2 hasta el 5 inclusive de este tratado.

Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

Annex 2 to Protocol No. 3.

ARTICLE I.

Her Majesty the Catholic Queen, in the name and representation of Spain, and thereunto constitutionally authorized by the Cortes of the Kingdom, relinquishes her sovereignty over the Island of Cuba, transferring it to the United States of America, which accept it, in order that they may in their turn transfer it at the proper time to the Cuban people, upon the conditions established in this treaty, the United States promising hereby that as soon as they are ratified they will always be faithfully complied with.

ARTICLE II.

The relinquishment and transfer made by Her Catholic Majesty, and accepted by the United States of America, embrace:

1st. All the prerogatives, powers and rights, which, as an integral part of the sovereignty, belong to Her Catholic Majesty both over the Island of Cuba and over its inhabitants;

2nd. All charges and obligations of every kind in existence at the time of the ratification of this treaty of peace, which the Crown of Spain and her authorities in the Island of Cuba may have contracted lawfully in the exercise of the sovereignty hereby relinquished and transferred, and which as such constitute an integral part thereof.

ARTICLE III.

In compliance with the provisions of the two preceding articles, Her Catholic Majesty, acting in the same representative character with which she has entered into this treaty, relinquishes and transfers to the United States, which accept

them, upon the conditions above stated, all the buildings, wharves, barracks, fortresses, establishments, public ways of communication, and all other immovable property which according to law attaches to the public domain, and which so attaching belongs to the Crown of Spain in the Island of Cuba.

All immovable property situated in the Island of Cuba which under the civil law belongs to the state as patrimonial property, and all rights and property of whatsoever kind, which up to the notification of the present treaty have been peacefully enjoyed and held in ownership by provinces, municipalities, public and private establishments, ecclesiastical and civil corporations, or any other collective bodies lawfully incorporated and having legal authority to acquire and hold property in the Island of Cuba, and by private individuals, whatsoever their nationality, are therefore excluded from the above relinquishment and transfer.

Her Catholic Majesty further relinquishes and transfers to the United States all right to the documents and papers exclusively relating to the sovereignty hereby relinquished and accepted, to be found in the archives of the Peninsula, said documents and papers to be delivered to the United States by the Spanish Government, copies of such portions of other documents and papers relating to other subjects foreign to the Island of Cuba, but relating to the sovereignty aforesaid, which may exist in the said archives, shall be given to the United States whenever desired. A similar rule shall be reciprocally observed in favor of Spain regarding documents and papers foreign, in whole or in part, to the Island of Cuba, which may be in the archives of the latter and of interest to the Spanish Government.

All archives and official records, executive and judicial, which are at the disposal of the Government of Spain and its authorities in the Island of Cuba, and which refer to the said Island or its inhabitants, and to their rights and property, shall be at the disposal of the United States, with the same rights and obligations as now attach to them while at the disposal of the Spanish Government and its said authorities. Private persons, Spaniards and Cubans alike, shall be entitled to make according to law authenticated copies of contracts, wills, and other instruments forming part of the notarial registers and files or in the custody of the executive and the judicial archives, be the same either in Spain or in the Island of Cuba.

ARTICLE IV.

In order to establish the charges and obligations of all kinds which the Crown of Spain cedes and transfers as a part of its sovereignty over the Island of Cuba to the United States, and which the latter accept, the two rules following will be observed:

First: The charges and obligations to be transferred must have been levied and imposed in constitutional form and in the exercise of its legitimate powers by the Crown of Spain, as the sovereign of the Island of Cuba, or by its lawful authorities in the exercise of their respective powers prior to the ratification of this treaty.

Second: The creation or establishment of such charges or obligations must have been for the service of the Island of Cuba, or chargeable to its own individual treasury.

ARTICLE V.

Pursuant to the provisions of the foregoing article, there shall be embraced in the said transfer all debts, of whatsoever kind, lawful charges, the salaries or allowances of all employes, civil and ecclesiastical, who shall continue to render services in the Island of Cuba, and all pensions in the civil and military services and of widows and orphans; provided that they conform to the requirements prescribed in the foregoing article.

ARTICLE VI.

Her Catholic Majesty, in the name and representation of Spain, and thereunto constitutionally empowered by the Cortes of the Kingdom, cedes to the United States of America, and the latter accept for themselves, the sovereignty over the Island of Porto Rico and the other islands now belonging to the Crown of Spain in the West Indies.

ARTICLE VII.

This cession of the sovereignty over the territory and inhabitants of Porto Rico and the other islands mentioned, is understood to embrace the cession of the rights and obligations, property and documents relating to the sovereignty of the said islands, similar in all things to those which, with respect to the relinquishment and transfer of the sovereignty of the Island of Cuba, are defined in Articles II. to V., inclusive, of the treaty.

True copy:

EMILO DE OJEDA.

COMMISSION OF THE SPANISH SECRETARY.

EXCMO. SENOR,

S. M. el Rey (q. D. g.) y en su nombre la Reina Regente del Reino, se ha servido expedir el Real Decreto siguiente:

"Tomando en consideracion las especiales circunstancias que concurren en Don Emilio de Ojeda, Mi Enviado Extraordinario y Ministro Plenipotenciario cerca de S. M. Sberiffiana; En nombre de Mi Augusto Hijo el Rey Don Alfonso Trece y como Reina Regente del Reino; Vengo en disponer que, conservando su cargo, pase a desempenar las funciones de Secretario General de la Comision española encargada de negociar en Paris el tratado de paz entre Espana y los Estados Unidos de America.

"Dado en Palacio a veintiseis de Septiembre de mil ochocientos noventa y ocho.

"MARIA CRISTINA.

"El Presidente del Consejo de Ministros,

"PRAXEDES MATEO SAGASTA:"

Lo que traslado a V. E. para su conocimiento ***.

Dios gue, a V. E. m. a.

Madrid, 26 Septiembre de 1898.

Senor Don EMILIO DE OJEDA.

SAGASTA.

TRANSLATION.

Most Excellent Sir:

H. M. the King (whom God preserve) and in his name the Queen Regent of the Kingdom has been pleased to issue the Royal Decree following:

"Bearing in mind the special qualifications of Don Emilio de Ojeda, My Envoy Extraordinary and Minister Plenipotentiary near His Sberiffian Majesty, in the name of my August Son, the King Don Alfonso XIII., and as Queen Regent of the Kingdom, I will that, still retaining his office, he discharge the functions of Secretary General of the Spanish Commission entrusted with negotiating in Paris the Treaty of Peace between Spain and the United States of America.

"Done at the Palace on the twenty-sixth of September, eighteen hundred and ninety-eight.

"MARIA CRISTINA.

"PRANEDES MATEO SAGASTA.

"President of the Council of Ministers."

Which I transmit to Y. E. for your information***.

God preserve Y. E. many years.

Madrid, September 26, 1898.

Senor Don EMILIO DE OJEDA.

SAGASTA.

Protocol No. 4.

CONFERENCE.

Of October 11, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners presented a paper, copy of which is hereto annexed, in which they rejected the articles submitted by the Spanish Commissioners at the last session as an amendment to the proposals of the American Commissioners on the subject of Cuba, Porto Rico and other islands in the West Indies, and the island of Guam in the Ladroneas.

The paper having been read in English and in Spanish, the President of the Spanish Commission on behalf of the Spanish Commissioners presented under the rules a memorandum setting forth their reasons in support of their propositions.

The American Commissioners inquired whether the Spanish Commissioners considered their propositions as finally rejected.

The Spanish Commissioners replied that the rejection was set forth in the very terms of the American reply, and that the occasion had therefore arisen for the presentation of their memorandum; but that, before filing the latter, they were ready and even preferred to discuss the subject of it orally, since this might result in an agreement and render the filing of the memorandum unnecessary.

The American Commissioners said that the memorandum could be read, but that they reserved the right under the rules to make a written reply, and that any oral discussion into which they might enter was not to be considered as a waiver of that right.

Protocolo No. 4.

CONFERENCIA

DEL 11 DE OCTUBRE DE 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leída y aprobada el acta de la sesion anterior.

Los Comisarios americanos presentan una contestacion rechazando el articulado de tratado que les entregaron los Comisarios espanoles en la sesion anterior como enmienda al proyecto del tratado que presentaron los americanos en lo relativo a la renuncia de Espana a la soberania de Espana sobre Cuba y a la cesion de Puerto Rico y otras islas en las Antillas asi como de la isla de Guam en el Archipiélago de las Ladroneas.

Se lee dicha contestacion en ingles y en espanol.

Rechazado el articulado espanol el Presidente de la Comision espanola en nombre de dicha Comision y en virtud del reglamento, presenta un Memorandum en que se consignan las razones en que fundaron su proposicion.

La Comision americana pregunta si consideran los espanoles definitivamente rechazada su proposicion.

La Comision espanola dice que el rechazo esta consignado en los propios terminos de la contestacion americana, y que por tanto era llegado el momento de presentar el Memorandum; pero que esto no obstante esta dispuesta a discutir oralmente el asunto antes de que se tome acta del Memorandum y hasta preferiria este curso, puesto que de llegarse a un acuerdo en la discusion podria prescindirse de la presentacion del Memorandum.

Se admite la lectura del documento, si bien los Comisarios americanos se reservan el derecho, sea o no leído o discutido oralmente, de contestar por escrito en la misma forma.

Leease en inglés el Memorandum que va adjunto al acta presente.

Los Comisarios americanos manifiestan que en su sentir, habiendo sido rechazado el articulado presentado por los Comisarios españoles, y habiendo estos presentado el Memorandum al respecto, según previene el reglamento, los Comisarios americanos están facultados para contestar por escrito y que por tanto la discusión debía versar ahora sobre los artículos propuestos por los americanos.

Los Comisarios españoles declararon que en su opinión habiendo sido rechazados ambos estaban en igual caso y debían discutirse a la vez ambos proyectos.

Los Comisarios americanos en vista de esto se manifestaron dispuestos a oír los argumentos que tenían que aducir los españoles; pero estos teniendo en cuenta que los americanos debían presentar una contestación escrita propusieron aplazar la discusión oral hasta que les fuera conocido el contenido de la respuesta americana.

Se convino en ello.

El Presidente de la Comisión española manifestó que por la rápida lectura del documento americano comentando el articulado presentado por la Comisión española, había comprendido que los Comisarios americanos habían sido inducidos en error al creer que en dicho articulado se exigía que los Estados Unidos aceptaran la renuncia en su favor de la soberanía de España sobre Cuba, hubieran de transmitirla al pueblo cubano. El Presidente añadió que al mencionar en dicho articulado que dicha renuncia la hacía España "a fin de que los Estados Unidos puedan transferirla al pueblo cubano" España se adaptaba al espíritu y a la letra de la joint-resolution del Congreso americano, pero en el proyecto español no se imponía esta obligación a los Estados Unidos puesto que se decía que podían hacer la transferencia de la soberanía mas no que hubieran de tener la obligación de hacerla.

Los Comisarios americanos contestaron que en efecto había sido su impresión que la renuncia por parte de España estaba hecha en términos que según las leyes americanas implicaban una obligación fiduciaria.

The memorandum, copy and translation of which are hereto annexed, was then read.

The reading having been completed, the American Commissioners stated that their understanding of the situation was this: that, the articles presented by the Spanish Commissioners having been rejected, and the Spanish Commissioners having thereupon filed a memorandum under the rules, the American Commissioners were entitled to make a written reply, and that the question now recurred on the articles proposed by the American Commissioners.

The Spanish Commissioners declared that in their opinion the proposition on both sides had been rejected, and that both propositions were before the Commission on an equal footing for oral discussion.

The American Commissioners stated that they were ready to hear the Spanish Commissioners.

The Spanish Commissioners suggested that, as the American Commissioners wished to reply to the Spanish memorandum, it would be advisable to postpone the oral discussion till the reply was before the Commission.

To this the American Commissioners assented.

The President of the Spanish Commission then stated that from the rapid reading of the paper presented by the American Commissioners at the opening of the session, they had derived the impression that those Commissioners were laboring under a misapprehension as to the stipulation in the Spanish articles touching Spain's relinquishment of sovereignty over Cuba. In proposing that the sovereignty should be relinquished to the United States in order that the latter might transfer it to the Cuban people, Spain had merely conformed to the letter and spirit of the joint resolution of the American Congress; but it was not her intention to impose upon the United States an obligation to make such transfer, as was shown by the fact that it was said in the articles that the United States "may" transfer the sovereignty, not that they were bound to do it.

The American Commissioners replied that the language employed in the article would, under the American law, impress the relinquishment with a trust.

The Spanish Commissioners said that if the phraseology lent itself to doubts, either under American law or under international rules of interpretation, they would change it. La Comision espanola contesto que si tal era el sentido que segun las leyes americanas podian atribuirle, se modificaria el texto en el sentido que acababa de sugerir.

The conference was adjourned to Friday, October 14, at two o'clock p. m. Se aplazo la conferencia hasta el viernes 14 de Octubre a las 2 p. m.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WM. P. FRYE,
GEO. GRAY,
WHITELAW REID,
JOHN B. MOORE.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERRERO,
EMILIO DE OJEDA.

Annex 1 to Protocol No. 4.

The American Commissioners, when they presented in the conference of the 3d instant a draft of articles for the relinquishment by Spain of sovereignty over and title to Cuba and for the secession of Porto Rico and other islands in the West Indies, and the Island of Guam in the Ladronez, stated that the disposition of these subjects was determined by the Protocol of August 12, 1898.

The two articles of the Protocol relating to these subjects are brief, and, as it seems to the American Commissioners, easy of comprehension and readily to be carried into effect.

They are:

"ARTICLE I.—Spain will relinquish all claim of sovereignty over and title to Cuba.

"ARTICLE II.—Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladronez to be selected by the United States."

The American Commissioners were careful, in the articles proposed by them, to express the relinquishment or cession, as the case might be, in the very words of the Protocol, merely adding thereto the usual subsidiary and incidental clauses touching public property and archives, with a view to making the treaty effectual, and preserving evidence of public and private property rights.

The American Commissioners regret to find in the articles presented by the Spanish Commissioners on the 7th instant a departure from the terms of the Protocol in the following particulars:

To the unconditional engagement of the Protocol to relinquish all claim of sovereignty over and title to Cuba, they have proposed conditions:

1. That Spain shall transfer her sovereignty over the island to the United States, and that the United States "shall in their turn transfer it at the proper time to the Cuban people."

2. That this transfer shall be made upon the conditions to be established in the treaty between the United States and Spain.

3. That the United States shall engage itself to Spain for the performance of these conditions.

In place of the unconditional relinquishment agreed to in the Protocol, it is proposed that the relinquishment now offered shall embrace all charges of every kind which Spain and her authorities in Cuba have lawfully contracted heretofore, and may hereafter contract, prior to the ratification of the treaty of peace; and these "charges and obligations," past, present and future, which it is proposed to "transfer" to the United States, are declared to include debts, civil and ecclesiastical salaries, and civil and military pensions, ostensibly in arrears, as well as yet to accrue.

To the American Commissioners this appears to be not a proposition to "relinquish all claim of sovereignty over and title to Cuba," but in substance a proposition to "transfer to the United States and in turn to Cuba a mass of Spanish charges and obligations."

It is difficult to perceive by what logic an indebtedness contracted for any purpose can be deemed part of the sovereignty of Spain over the Island of Cuba. In the article proposed it is attempted to yoke with the transfer of sovereignty an obligation to assume an indebtedness arising out of the relations of Spain to Cuba. The unconditional relinquishment of sovereignty by Spain stipulated for in the Protocol is to be changed into an engagement by the United States to accept the sovereignty burdened with a large mass of outstanding indebtedness.

It is proper to say that if during the negotiations resulting in the conclusion of the Protocol Spain had proposed to add to it stipulations in regard to Cuba such as those now put forward, the proposal, unless abandoned, would have terminated the negotiations.

The American Commissioners, therefore, speaking for their Government, must decline to accept the burden which it is now proposed shall be gratuitously assumed.

The American Commissioners further observe that in article 3 of the draft there is a negative clause, by which property not belonging to the Crown of Spain is excepted from the proposed relinquishment and transfer of sovereignty. In one respect this exception appears to be unnecessary, and in another illogical. So far as it affects

*See Protocol No. 5

the question of legal title it is unnecessary, since such title, if not held by Spain, would not pass to the United States by Spain's transfer of sovereignty. On the other hand, so far as it affects the question of sovereignty, it is illogical, since the sovereignty, which includes the right of eminent domain, would, if excepted from the relinquishment, remain with Spain. We would thus have the singular spectacle of Spain relinquishing her sovereignty over property belonging to the Crown, but retaining it over all other property.

Thus again we should witness the utter defeat of the explicit engagement in the Protocol that Spain would "relinquish all claim of sovereignty over and title to Cuba."

In the articles presented by the American Commissioners there were stipulations in relation to archives and official records, which stipulations were intended to secure, and, as the American Commissioners believe, would effectually secure, the object of preserving and of furnishing to those in interest evidence of title to property in the islands in question.

(¹) See Protocol No. 5.

In the articles submitted by the Spanish Commissioners, it is provided that documents and papers relating to sovereignty to be found in the archives of the Peninsula shall be furnished to the United States; also "copies of such portions of other documents and papers relating to other subjects foreign to the Island of Cuba and the sovereignty aforesaid as may exist in the said archives."

It is difficult for the Americans to understand this latter clause; perhaps its exact meaning is not conveyed in the English translation of the Spanish text.

It is to be further observed that in the provisions of the Spanish articles relating to the furnishing of record evidence of titles to lands in Cuba and Porto Rico, it is stipulated that the archives and records shall be at the disposal of the United States "with the same rights and obligations as now attach to them while at the disposal of the Spanish Government and its said (insular) authorities." This restriction, the object of which is not perceived, would seem to limit the control over archives and official records, after Spain's relinquishment of sovereignty, to the same power, both in kind and in extent, as was formerly possessed by the Spanish Government. This appears to be inconsistent with the right of control which every sovereign power should possess over its archives and official records.

All the conditions and qualifications above referred to are by general reference incorporated in the articles relating to the cession of Porto Rico and other islands in the West Indies, and render these articles equally inadmissible.

True copy:

J. B. MOORE.

COMISION

PARA LA NEGOCIACION DE LA PAZ CON LOS ESTADOS UNIDOS.

MEMORANDUM

en que se exponen sucintamente las razones o fundamentos del proyecto de artículos para el tratado de paz, relativos a la renuncia, por parte de España, de su soberanía en Cuba y Puerto Rico, que presentan a la conferencia los Plenipotenciarios españoles.

Los Plenipotenciarios españoles aceptan el pensamiento generador del proyecto de artículo presentado por los Señores Comisarios americanos sobre la renuncia de España a su soberanía en Cuba y la cesión de su soberanía en Puerto Rico; pero les es imposible prestar el mismo asentimiento a lo demás que en dicho proyecto se contiene, ya porque entienden que parte de ello está fuera del alcance que cabe dar a la renuncia y cesión sobredichas, ya porque también estas renuncia y cesión, tal como aparecen en aquel proyecto, no contienen bajo otros aspectos cuanto es indispensable que comprendan.

I.

La renuncia que hace S. M. C. de su soberanía en la Isla de Cuba es indispensable que sea aceptada por el Presidente de los

Estados Unidos de América.

El Gobierno de la Unión americana nunca exige al Gobierno español que abandone la soberanía en Cuba, sino que la renunciase para que la Isla fuese independiente. Así consta en la correspondencia diplomática que conserva el Gobierno de S. M. C. sobre las negociaciones entre ambas Altas Partes contratantes anteriores a la declaración de la guerra. Así también las Cámaras americanas lo declararon en la resolución conjunta de 19 de Abril último, aprobada después por el Señor Presidente de los Estados Unidos. El artículo primero de la citada resolución dice: "que el pueblo de Cuba es y debe ser libre e independiente."

Así también el Señor Secretario de Estado en Washington ordenó en 20 del citado mes a su Ministro en Madrid, que lo comunicase al Gobierno español, empleando las mismas palabras del texto de aquella resolución para que "España renunciase inmediatamente su autoridad y gobierno en la Isla de Cuba."

Y así finalmente se consigna en el artículo 10 del Protocolo firmado en Washington en doce de Agosto pasado, cuyo artículo 10 según el texto oficial, firmado en idioma francés, a la vez que el firmado en idioma inglés por los representantes de ambas Altas Partes contratantes, dice así:

"ARTICLE 1. L'Espagne renoncera a toute pretention a sa souverainete et a tout droit sur Cuba," que literalmente traducido al español equivale a lo siguiente:

"La España renunciara a toda pretensión a su soberanía y a todo derecho sobre Cuba."

Sería ofender la grande ilustración de los Señores Comisarios americanos tratar de demostrarles la esencial diferencia que, según la doctrina elemental del derecho público internacional, y la práctica de las naciones, existe entre el abandono y la renuncia de la soberanía.

El territorio abandonado tiene derecho para adquirirlo el primer ocupante; el territorio renunciado pasa necesariamente a aquel a cuyo favor tiene que hacerse la renuncia. Y los Estados Unidos exigieron la de España para el pueblo cubano a fin de que se constituyese independiente.

Aunque es verdad que los Estados Unidos de América, en el caso presente, exigieron esto de España, exigieron también que tal renuncia había de hacerse por su mediación. Los Estados Unidos habían de recibir la Isla de Cuba y conservarla en su poder teniendo su gobierno hasta su pacificación, "abrigando el propósito de dejar (no se puede dejar lo que no se tiene) el dominio y gobierno de la Isla al pueblo

de esta, una vez realizada dicha pacificación." Así solemnemente se consigno en el artículo 40 de la resolución conjunta de las Camaras americanas y en el despacho del Señor Ministro de Estado americano a su Ministro en Madrid. Y si hasta la pacificación de la Isla no han de dejar su dominio y gobierno los Estados Unidos, es de toda evidencia que entretanto son ellos los que lo han de conservar.

Y efectivamente los Estados Unidos conservaron y conservan en su poder a Santiago de Cuba y los demas territorios de la Isla en que dominan sus armas, sin haberlos entregado al pueblo cubano, por no tener todavía Gobierno que lo represente. Y en el Protocolo de Washington ya citado (artículo 40), se acordo que la evacuación de la Isla por las tropas españolas y sus detallas se convendrían por una Comisión mixta formada por Comisarios del Gobierno español y Comisarios del Gobierno de Washington, pero no por Comisario del pueblo cubano.

El Gobierno federal es pues, el que, necesariamente, tiene que aceptar la renuncia que hace el de España a la soberanía en la Isla, para conservar esta Isla en su poder y gobernarla hasta que este pacificada, en cuyo caso, y no antes, según sus propias resoluciones, es cuando se proponen dejar la soberanía de aquel territorio a disposición del Gobierno que se constituya en Cuba.

II.

La cesion y la renuncia de la soberania comprenden las de los derechos y de las obligaciones que la constituyen.

El concepto de la soberanía de un Estado nunca se ha confundido en el mundo antiguo ni mucho menos en el mundo moderno y cristiano, con el concepto del dominio civil y privado y menos aun con el del dominio del señor sobre el esclavo.

El soberano, es verdad que tiene prerrogativas y derechos sobre el territorio y sus habitantes; pero estas prerrogativas derechos le corresponden no para su satisfacción y goce, sino para el buen gobierno y bienestar de los pueblos que estan a su soberanía sometidos. Por esta razón, los derechos del soberano se convierten en obligaciones para con sus subditos. El soberano tiene obligación de cuidar de su buen regimen y de su progreso y prosperidad. El soberano no es dueño de los impuestos y rentas que percibe de sus subditos, para emplearlos y consumirlos en su propio y personal beneficio, sino para invertirlos en la satisfacción de las necesidades publicas y en el bienestar de aquellos. El cumplimiento de estas obligaciones es el fundamento de la legitimidad de sus facultades para celebrar con terceras personas todas las convenciones y contraer todas las obligaciones que sean necesarias para procurarse los recursos precisos al buen regimen y gobierno de sus subditos y atender al mejor servicio publico de los mismos.

Estas obligaciones subsisten desde que se contraen hasta que se cumplen.

Y es de toda evidencia que si durante todo el tiempo intermedio entre la constitución y el cumplimiento de una obligación de soberanía, el soberano la pierde por renuncia u otro título legitimo, la obligación pendiente pasa como parte integrante de la soberanía misma a aquel que en ella le sucede. Seria contrario a la noción mas elemental de la justicia, e incompatible con el dictado de la conciencia universal de las gentes, que un soberano perdiera sus derechos sobre el territorio y sus subditos y hubiera de continuar esto no obstante sometido al cumplimiento de las obligaciones que habla creado, exclusivamente, para su regimen y gobierno.

Estas maximas aparecen observadas por todas las naciones cultas que no han querido atropellar los principios eternos de la justicia, incluso aquellas en que estas cesiones se hicieron por la fuerza de las armas y como premio de la victoria en los tratados sobre cesiones territoriales. **Rare** es el tratado en que no ha pasado con el territorio cedido al nuevo soberano una parte proporcional de las obligaciones generales del Estado cedente, que en la mayoría de los casos tenían la forma de deuda pública.

Pera aun es mas claro el caso a que se refiere la convencion que ha de elaborar esta conferencia. Aquí no se trata de transferir, con la soberanía de Cuba y Puerto Rico, una parte proporcional de las obligaciones y cargas generales de la Metrópoli, sino tan solo las obligaciones y cargas que son peculiares a las Islas que se ceden y transfieren. Cuando no se trata de obligaciones de conjunto y comunes a todos los territorios sometidos al soberano que las contrae, sino de obligaciones especiales al territorio mismo cedido y contraídas por sus legítimas autoridades, ni una sola vez, aun en aquellos tratados en que el vencedor se ha mostrada mas displacido con el vencido han dejado de pasar con el territorio cedido sus propias y peculiares cargas y obligaciones. Así, puede considerarse como clausula casi obligada, la de que la cesion del territorio lleva consigo la de las obligaciones y deudas departamentales, comunales y en general hablando, peculiares al territorio de la cesion. El Gran Conquistador de este siglo no se atrevio jamas a violar esta regla

de eterna justicia, en todos los tratos que celebros con aquellos soberanos, cuyos territorios, en todo o en parte, convertia en premio de sus victorias.

Pues bien, es de hacer constar, que la soberania de Espana jamas dejo de administrar separadamente de la Metropoli sus colonias en America, desde su descubrimiento. La America espanola estuvo siempre gobernando desde la capital de la monarquia por un Consejo especial llamado de Indias que en nada intervenia en el regimen y gobierno de la Peninsula, el cual corria a cargo del Consejo llamado de Castilla.

Dividido el territorio descubierto por Colon y por otros ilustres exploradores espanoles (que tan lumenso, aunque no siempre agradecido servicio han prestado a la civilizacion) en Virreynatos y Capitanias Generales, cada uno de estos pequenos Estados recaudaba sus propios ingresos y cubria sus propios gastos, o contrala para cubrirlos las obligaciones que las necesidades de su propio gobierno demandaban: y cuando alguno de estos territorios se hallaba en deficit permanente, como sucedia a la Isla de Cuba, la colonia hermanada mas proxima acudia a su socorro. El Virreynato de Mejico desde 1766 hasta 1806 auxilio a la Isla de Cuba anualmente con fuertes cantidades para sus atenciones de gobierno y para el desarrollo de su natural riqueza entonces inexplorada, a cuyos gastos no podia, a la sazón, atender con sus recursos propios. Nada menos que 108 millones de pesos entraron en Cuba procedentes de Mejico bajo tal concepto, durante aquel periodo; conociendose estos auxilios en la administracion colonial espanola con el nombre de "situado de Mejico."

En el siglo actual llevo Espana hasta sus ultimas consecuencias este sistema de administracion separada e independiente de sus colonias. El Ministerio de Ultramar era el departamento donde se concentraba esta administracion. Cada colonia tuvo anualmente su propio presupuesto y sus deficits; cuando sus propios ingresos no eran bastantes para cubrir sus propios gastos fueron atendidos por operaciones especiales de deuda consolidada, hipotecaria o flotante para y con cuenta de la colonia en cuyo beneficio estas operaciones se hicieron.

Y la separacion entre la administracion de la Peninsula y la colonial fue, durante mucho tiempo tan completa, que el personal de funcionarios publicos para los servicios administrativos y judiciales de las colonias, era peculiar a las mismas, hasta el punto de que estos funcionarios no tenian aptitud legal para ser incluidos en los cuerpos gerarquicos similares de Espana, ni desempenar en ella analogas funciones.

Este regimen es el bajo que vino Espana administrando a Cuba hasta el momento presente.

Sabemos bien que fuera de Espana se incurre en gravisimos errores, por efecto de no ser conocido el regimen colonial espanol, pero es tiempo ya, y sobre todo es necesario, la ocasion presente, que estos errores se desvanezcan, contrastandolos con la verdad de los hechos y con los preceptos de las leyes espanolas, Cuba y Puerto Rico nunca han vivido dentro del presupuesto general de la Nacion espanola ni en este figuraron jamas sus ingresos, ni se incluyeron sus gastos. Todas las obligaciones que esten pendientes y hayan sido legalmente creadas para el servicio de Cuba y Puerto Rico y a cargo de sus especiales Tesoros, siempre distintos y separados del Tesoro de la Peninsula, son obligaciones cubanas o puertorriqueñas, es decir, obligaciones locales, que afectan unica y exclusivamente al territorio de las Islas y a sus habitantes.

Lo dicho hasta aqui sobre la naturaleza de las obligaciones coloniales y sobre los obligados a su cumplimiento, jamas lo han desconocido edicho sea en su honor) los pueblos hispano-americanos. Aquellos conquistaron por su propio esfuerzo su independencia y la mayor parte de ellos antes que Espana la hubiera reconocido, habian, por las anteriores y solemnes de sus Camaras, declarado propias y como las mas privilegiadas de todas las deudas, las que la Corona de Espana habia contraido, durante su soberania, para el servicio de aquellos territorios, y se hallaban registradas en sus respectivos libros de Tesoreria.

Son muy contadas las republicas hispano-americanas que aguardaron a hacer tan honrada declaracion, a que la Metropoli reconociera su independencia, porque, como decian, la Republica Argentina en el tratado que celebros con Espana en 21 de Septiembre de 1863, y la del Uruguay, en el que celebros en 19 de Julio de 1870, "asi como ellas adquirian los derechos y privilegios correspondientes a la Corona de Espana, contraian tambien todos sus deberes y obligaciones." z

Notese que las Republicas hispano-americanas, sin excepcion, reconocieron e hicieron suyas estas deudas de cualquier clase que fueran, detallandolas en el tratado de paz con Bolivia de 21 de Julio de 1847, en que se dice que, "comprendian todos los creditos por pensiones, sueldos, suministros, anticipos, fletes, empréstitos forzosos, depositos, contratos y sualquiera otra deuda, ya da guerra, ya anterior a esta, que pasaren sobre aquellas Tesorerias, siempre que procediesen de ordenes directas del Gobierno espanol o de sus autoridades constituidas en aquellos territorios."

Espana no reconocio la independencia de ningun Estado americano que antes hubiera sido colonia suya, sino con esta condicion, que aquellos Estados espontaneamente declararon en sus respectivos tratados, que era de perfecta justicia.

Su derecho y su dignidad no le permiten reconocer sin esta condicion, que ahora mas que antes, si cabe(continua siendo de justicia, la independencia de los pueblos cubana y puertorriqueno que estos no han podido conquistar por su propio y exclusivo esfuerzo.

Espana eta dispuesta a ceder la soberania de Puerto Rico y demas islas de las Indias Occidentales, y a renunciar a lo soberania de la Isla de Cuba, todo a favor de los Estados Unidos, que habran de aceptarla, poniendo a su disposicion esta soberania en el estado en que actualmente la posee, y por lo tanto con los derechos y las cargas que actualmente la constituyen. A esto se obliga en los articulos 10 y 20 del Protocolo firmado en Washington en 12 de Agosto ultimo y esto es lo que quiere cumplir con la mas exquisita lealtad en este tratado.

Esta conforme:

EMILIO DE OJEDA.

Annex 2 to Protocol No. 4.

MEMORANDUM

succinctly setting forth the grounds or reasons of the proposed articles for the treaty of peace relating to the relinquishment by Spain of her sovereignty over Cuba and Porto Rico, presented to the conference by the Spanish Plenipotentiaries.

The Spanish Plenipotentiaries accept the main idea of the proposed article, as drafted by the American Commissioners, relating to the relinquishment by Spain of her sovereignty over Cuba and the cession of her sovereignty over Porto Rico; but they are unable to concur in the remaining portions of said draft; because, on the one hand, they understand that part thereof goes beyond the proper scope of said relinquishment and cession; and because, on the other, the said relinquishment and cession as expressed in the said draft do not embody, in other ways, all that it is indispensable they should.

I.

It is imperative that the President of the United States should accept the relinquishment made by Her Catholic Majesty of her sovereignty over the Island of Cuba.

The Government of the American Union never demanded that the Spanish Government abandon (abandonar) the sovereignty over Cuba, but that it relinquish (renunciar) the same, so that the Island should become independent. It so appears from the diplomatic correspondence in the possession of the Government of Her Catholic Majesty relating to the negotiations between the two contracting parties prior to the declaration of war. It was also thus declared by the American Congress in the Joint Resolution of April 19 last, subsequently approved by the President of the United States. The first clause of that resolution reads "that the people of Cuba are and of right ought to be free and independent."

So also, on the 20th of the same month, did the Secretary of State in Washington instruct the American Minister in Madrid to say to the Spanish Government, using the identical language of the Joint Resolution, that "Spain should at once relinquish its authority and government in the Island of Cuba."

And so, finally, was it set forth in Article I. of the Protocol signed in Washington on the 12th of August last, the official text of which as signed in French and English by the representatives of the two High Contracting Parties reads as follows:

"ARTICLE Ier. L'Espagne renoncera a toute pretention, a sa souverainete et a tout droit sur Cuba," which literally translated into Spanish is as follows: "Espana renunciara a toda pretension a su soberania y a todo derecho sobre Cuba."

To undertake to explain the essential difference which according to the elementary principles of public international law and the usage of nations exists between the abandonment (abandono) and the relinquishment (renuncia) of sovereignty, would be to offend the intelligence of the learned American Commissioners.

Abandoned territories can of right be acquired by the first occupant, while relinquished territories necessarily pass unto him to whom relinquishment is made. And the United States demanded that Spain relinquish in order that the Cuban people might become independent.

Although it is true that the United States of America demanded this of Spain in the present case, they also demanded that such relinquishment must be made through them. The United States were to receive the Island of Cuba and retain the possession thereof, governing it until its pacification was secured, asserting its "determination to leave [no one can leave what he does not hold] the government and control of the island to its people, as soon as the said pacification is accomplished." So was it solemnly set forth in section 4 of the Joint Resolution of the American Congress and in the dispatch of the Secretary of State to the American Minister at Madrid. And if the United States are not to leave the government and control of the island until the pacification thereof is accomplished, it is self-evident that in the meantime the United States are called upon to administer the one and retain the other.

And, in fact, the United States held and continue to hold Santiago de Cuba and the other territories of the island where their arms are supreme without having delivered them over to the Cuban people, as the latter have not as yet any Government to represent them. And in the said Protocol of Washington (Article IV.) it was agreed that the evacuation of the island by the Spanish troops and the details thereof should be arranged and carried out by a mixed commission, consisting of Commissioners appointed by the Washington Government and by the Spanish Government, but not of Commissioners appointed by the Cubans.

The Federal Government is therefore the one which must of necessity accept the relinquishment made by Spain of her sovereignty over the island, so as to retain the latter under its control and government until it is pacified, in which event, and not before, according to its own declarations, it will leave the sovereignty over that territory at the disposal of the Government that may be constituted in Cuba.

II.

The cession and relinquishment of sovereignty embraces the cession and relinquishment of the rights and obligations constituting it.

The idea of the sovereignty of a State was never confounded in the ancient world, and much less in the modern and Christian world, with the idea of individual or private ownership. Much less still with the authority of the master over the slave.

The sovereign, it is true, has prerogatives and rights over the territory and its inhabitants; but these prerogatives and rights attach to him not for his own satisfaction and enjoyment, but for the good government and the welfare of the people subject to his rule. For this reason the rights of the sovereign become obligations with respect to his subjects. The sovereign is bound to see that they have a good government and to their progress and prosperity. The sovereign is not the owner of the tax proceeds or of the revenues he receives from his subjects, to be used for his own personal benefit, but to meet with them all public necessities and attend to the public welfare. The fulfilment of these obligations is the foundation of the legitimacy of his authority to enter into conventions and agreements of all kinds with third parties, to contract all the obligations necessary to raise means for the good administration of the government of his subjects, and to attend to the public service in the best possible manner.

These obligations exist from the moment they are contracted until they are fulfilled. And it is perfectly self-evident that if during the period intervening between the assumption by a sovereign of an obligation and the fulfilment of the same, he shall cease to be bound thereby through relinquishment or any other lawful conveyance, the outstanding obligation passes as an integral part of the sovereignty itself to him who succeeds him. It would be contrary to the most elementary notions of justice and inconsistent with the dictates of the universal conscience of mankind for a sovereign to lose all his rights over a territory and the inhabitants thereof, and despite this to continue bound by the obligations he had contracted exclusively for their regime and government.

These maxims seem to be observed by all cultured nations that are unwilling to trample upon the eternal principles of justice, including those in which such cessations were made by force of arms and as a reward for victories through treaties relating to territorial cessations. Rare is the treaty in which, together with the territory ceded to the new sovereign, there is not conveyed a proportional part of the general obligations of the ceding State, which in the majority of cases have been in the form of a public debt.

But the case to which the convention to be framed by this conference refers is clearer still. It is not the purpose here to transfer, together with the sovereignty over Cuba and Porto Rico, a proportional part of the obligations and general charges of the mother country, but only the obligations and charges attaching individually to the islands ceded and transferred. When not treating of general obligations common to all the territories subject to the sovereign contracting the same, but of the special obligations of the particular territories ceded which were contracted by its legitimate authorities, in no single case, not even in those treaties in which the victor has shown himself most merciless toward the vanquished, have the individual and separate charges and obligations of a ceded territory failed to pass therewith. Thus it may be considered as an absolutely essential condition that the cession of territory carries with it the cession of the departmental, communal, and, generally speaking, individual obligations and debts of the ceded territory. The Great Conqueror of this century never dared to violate this rule of eternal justice in any of the treaties he concluded with those sovereigns whose territories he appropriated in whole or in part, as a reward for his victories.

Very well; it must be recorded that the sovereignty of Spain never ceased to administer its colonies in America, from the time of the discovery, separate from the mother country. Spanish America was always governed from the capital of the monarchy by a special council called "Council of the Indies," which in no wise interfered in the regime and government of the Peninsula, which was under a council designated as the "Council of Castile."

The territory discovered by Columbus and other illustrious Spanish explorers who have rendered such great though not always appreciated services to civilization being divided into vice-royalties and captaincies-general, each of these small States collected its own revenues and met its own expenses, or contracted obligations to meet the necessities of its own separate government; and when one of these territories found itself with a permanent deficit, as was the case in the Island of Cuba, the nearest sister-colony came to its rescue. The Vice-royalty of Mexico from 1766 to 1806 annually assisted the Island of Cuba with heavy sums for its governmental needs and the development of its natural resources, at the time unexploited, which expenses it could not, at such time, meet from its own revenues. Not less than 100 millions of pesos came into Cuba from Mexico during that period, this assistance being known in the Spanish colonial administration under the name of "Situated de Mexico."

During the present century Spain carried to the last extreme this system of the separate and independent administration of its colonies. The Ministry of the Colonies was the department where this administration was centred. Each colony had annually its own budget and deficits. When its own revenues were not sufficient to cover its own expenses, these were met by special operations in the way of consolidated, mortgage or floating debts, and were chargeable to the colony for whose benefit such operations were conducted.

And the separation of the administration of the Peninsula and the colonies was for a long time so complete that the body of public employes in the executive and judicial services of the colonies was separate and independent, to the extent that these employes had not the legal capacity to be included in the similar hierarchical bodies of Spain, or to discharge therein like functions.

This regime is the one under which Spain has been administering Cuba up to the present time.

We are well aware that outside of Spain grave errors are fallen into, owing to the Spanish colonial system being unknown; but it is high time and above all at this juncture is it necessary that these errors be dissipated by comparing them with the actual facts and the provisions of Spanish laws. Cuba and Porto Rico have never been included in the general budget of the Spanish nation, nor have their revenues ever figured therein, which is also true of their expenditures. All outstanding obligations that have been legally contracted for the service of Cuba and Porto Rico, and which are chargeable to their individual treasuries, always distinct and separate from the treasury of the Peninsula, are Cuban or Porto Rican obligations—that is, local obligations, solely and exclusively affecting the territory of the islands and their inhabitants.

What has been said up to this point regarding the nature of the colonial obligations and those bound thereby, has never been disregarded (to their honor be it said) by the Spanish-American peoples. They achieved their independence through their own efforts, and the majority of them, before Spain had recognized it, had by prior and solemn acts of their legislatures, declared as their own and as having preference those debts which the Crown of Spain had contracted during the continuance of its sovereignty for the service of such territories, and which debts were recorded in their respective treasury books.

Very few of the Spanish-American Republics delayed so honorable a declaration until the mother country had recognized their independence, as was said by the Argentine Republic in the treaty concluded with Spain on September 21, 1863, and by Uruguay, in that concluded on July 19, 1870: "Just as they acquired the rights and privileges belonging to the Crown of Spain, they also assume all its duties and obligations."

Note that the Spanish-American republics without exception recognized and assumed as their own these debts of every kind whatsoever, specifying them in the treaty of peace with Bolivia of July 21, 1847, wherein it is stated that they "include all debts for pensions, salaries, supplies, advances, transportation, forced loans, deposits, contracts and any other debt incurred during war times or prior thereto, chargeable to said treasuries; provided they were contracted by direct orders of the Spanish Government or its constituted authorities in said territories."

Spain did not recognize the independence of any American State which had previously been her colony save upon this condition, which those States spontaneously incorporated in their respective treaties, as of right they should.

Her right and her dignity will not permit her to recognize—without this condition, which now more than ever if possible is still just and proper—the independence of the Cuban and Porto Rican peoples, which they have not been able to achieve by their own unaided efforts.

Spain is disposed to cede the sovereignty over Porto Rico and other islands of the West Indies, and to relinquish the sovereignty over the Island of Cuba, all in favor of the United States, which shall accept the same; she placing this sovereignty at their disposal in the condition in which she now holds it, and therefore, with the rights and charges at present constituting it. She bound herself to this by Articles I. and II. of the Protocol signed at Washington on August 12 last, and this is what she desires to carry out with the strictest faith in the present treaty.

True Copy:

EMILIO DE OJEDA.

Protocol No. 5.

CONFERENCE

of October 14, 1898.

Present—

On the part of the United States:

**Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

On the part of Spain:

**Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.**

The protocol of the preceding session was read and approved.

The American Commissioners presented a reply to the memorandum submitted by the Spanish Commissioners at the last session on the relinquishment of sovereignty over Cuba and the transfer of debts. The paper was read, and a copy of it is hereto annexed.

The Spanish Commissioners, referring to the paper in which the American Commissioners rejected, at the conference of the 11th instant, the articles presented by the Spanish Commissioners at the conference of the 7th, on the subject of Cuba and Porto Rico, called attention to the following sentence:

"To the American Commissioners this appears to be not a proposition to 'relinquish all claim of sovereignty over and title to Cuba,' but in substance a proposition to 'transfer' to the United States and in turn to Cuba a mass of Spanish charges and obligations."

The Spanish Commissioners desired a modification of this sentence on the ground that it might be thought to imply that they were not acting in good faith.

The American Commissioners stated that in their opinion the sentence did not convey such an imputation, but, out of deference to the Spanish Commissioners, they altered it to read as follows:

"To the American Commissioners this appears to be not a proposition to 'relinquish all claim of sovereignty over and title to Cuba,' but in effect a proposition to 'transfer' to the United States and in turn to Cuba a mass of charges and obligations which, in the opinion of the American Commissioners, properly belong to Spain."

Protocol No. 5.

CONFERENCIA

Del 14 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

**los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

Por parte de Espana:

**los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.**

El protocolo de la sesion anterior fue leído y aprobado.

Los Comisionados americanos presentaron una contestacion al Memorandum que los Comisionados espanoles sometieron en la ultima sesion acerca de la renuncia de la soberania sobre Cuba y la transferencia de sus deudas. El documento fue leído incluyendo una copia anexa a esta acta.

Los Comisionados espanoles refiriendose al escrito en el cual los Comisionados americanos rechazaron en la conferencia del dia 11 del corriente los articulos presentados por los Comisionados espanoles en la conferencia del 7, acerca de Cuba y Puerto Rico, llamaron la atencion sobre la siguiente frase:

"Crean los Comisionados americanos que esto no parece ser una proposicion para renunciar a toda pretension de soberania y a todo derecho sobre Cuba, sino mas bien una proposicion para transferir a los Estados Unidos y estos a su vez a Cuba, una masa de cargas y obligaciones espanolas."

Los Comisionados espanoles pidieron la modificacion de esta frase fundandose en que pudiera implicar que ellos no procedian de buena fe.

Los Comisionados americanos manifestaron que en su opinion la frase no tenia tal interpretacion, pero que por deferencia a los Comisionados espanoles, la modificaban en los terminos siguientes:

"Crean los Comisionados americanos que esto no parece ser una proposicion para renunciar a toda pretension de soberania y a todo derecho sobre la Isla de Cuba, sino que en realidad es una proposicion para transferir a los Estados Unidos y estos a Cuba una masa de cargas y obligaciones que en opinion de los Comisionados americanos pertenecen realmente a Espana."

This matter having been disposed of, the Spanish Commissioners stated that, before proceeding with the discussion of the questions under consideration, they desired it to be understood that, if certain articles should be agreed to, but in the end no treaty should be signed, the articles as agreed to should not in such case be taken as expressing either Government's estimation of its just rights in respect of the subjects to which the articles related.

The American Commissioners concurred in this view.

The Joint Commission then proceeded to the oral discussion of the points discussed in the Spanish memorandum of October 11 and the American reply of to-day.

After the discussion of the first point—the question whether the sovereignty over Cuba should be relinquished to the United States—was exhausted, without any agreement having been reached upon it, the American Commissioners proposed to take up the second point—the question whether charges and obligations constituted a part of the sovereignty and as such passed with it.

The Spanish Commissioners suggested that if no agreement could be reached on the first point it seemed to be needless to discuss the second.

The American Commissioners, concurring in this view, proposed that, owing to the lateness of the hour, the conference be adjourned to continue the discussion of the first point at the next session, which should be held on Monday, the 17th of October, at two o'clock p. m.

The Spanish Commissioners agreeing, the conference was adjourned accordingly.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WM. P. FRYE,
GEO. GRAY,
WHITELAW REID,
JOHN B. MOORE.

Resuelto esto asunto, los Comisionados espanoles manifestaron que antes de proceder a la discusion de las cuestiones sometidas a estudio, deseaban que se estableciera, que si algunos articulos fuesen aprobados, pero que al final no se llegase a firmar un tratado, tales articulos aprobados no deberian en ningun caso ser considerados como expresando la opinion de cualquiera de los Gobiernos sobre sus justos derechos respecto a los asuntos a los cuales dichos articulos se referian.

Los Comisarios americanos aceptaron esta proposicion.

Luego la Comision procedio a la discusion oral de los puntos que se tratan en el Memorandum espanol del 11 de Octubre y a la contestacion americana presentada hoy.

Y habiendose discutido, sin que se llegase a un acuerdo el primer punto, relativo a si la soberania sobre Cuba deberia renunciarse a favor de los Estados Unidos, los Comisarios americanos propusieron continuar con el segundo o sea la cuestion de si las cargas y obligaciones constitulan una parte de la soberania y como tales debian transmitirse con esta.

Los Comisionados espanoles indicaron que si no se podia llegar a un acuerdo en el primer punto, no parecia oportuno continuar la discusion del segundo.

Los Comisionados americanos opinaron de la misma manera y propusieron que dado lo avanzado de la hora, se aplazara la conferencia para continuar la discusion del primer punto en la proxima sesion, que se celebrara el lunes 17 de Octubre a las dos de la tarde.

Los Comisionados espanoles aprobaron esta mocion y en su consecuencia se suspendio la conferencia.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

Annex to Protocol No. 5.

The American Commissioners hereby present their reply to the memorandum which the Spanish Commissioners, under the rules of the Commission, submitted on the 11th instant, for the purpose of giving their reasons in support of the articles which the American Commissioners had rejected, in relation to Cuba and Porto Rico.

I.

The Spanish memorandum, referring to the demands of the United States before the war, to the joint resolution of Congress, and to the language of Article I of the Protocol of August 12, 1898, maintains that it is "imperative" that the United States "should accept the relinquishment made by Her Catholic Majesty of her sovereignty over the Island of Cuba." This contention is based upon the fact that in the various documents referred to the United States required Spain to "relinquish" her sovereignty, but did not demand that she "abandon" it.

A distinction is thus made between a relinquishment and an abandonment; and it is argued that while "abandoned territories" become derelict, so that they may be acquired by the first occupant, "relinquished territories" necessarily pass to him to whom relinquishment is made.

The American Commissioners are unable to admit that such a distinction between the words in question exists either in law or in common use.

The word "relinquish," as defined in the English dictionaries, means "to give up the possession or occupancy of; withdraw from; leave; abandon; quit." Again: "to renounce a claim to; resign; as, to relinquish a debt."

On the other hand, we find in that great monument of Spanish learning, the law dictionary of Escriche (*Diccionario de Legislacion y Jurisprudencia*), under the word *renunciar*, which the Spanish memorandum declares to be the equivalent of the French word *renoncer* (used in Spain's version of the Protocol), and of the English word "relinquish," the following definition: "The voluntary giving up of a right exercised or expected to be exercised, or of a thing held or possessed or expected to be held or possessed."

Commenting upon this definition, Escriche says:

"The relinquishment differs from the cession in that the latter requires for its completion the concurrence of the wills of the grantor and the grantee and a just cause for the transfer, while the former is perfect with only the will of the relinquisher. The effect of the relinquishment is confined to the abdication or dropping of the right or thing relinquished. The effect of the cession is the conveyance of the right to the grantee."

The distinction thus drawn, not between relinquishment and abandonment, which are treated both in English and in Spanish as practically the same, but between relinquishment and cession, is written upon the face of the Protocol, which, while obligating Spain (Article I) to "relinquish all claim of sovereignty over and title to Cuba," in the next article requires her to "cede to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrões, to be selected by the United States."

If it were true, as maintained in the Spanish memorandum, that the act of relinquishment includes, and requires for its completion, the process of legal transfer from one hand to another, and thus constitutes in form and in effect a cession, it is obvious that the contracting parties, in framing the Protocol, employed, in stipulations which were deliberately separated and sharply contrasted, different words to express the same meaning.

The American Commissioners understand the Spanish memorandum to maintain that their Government, prior to the war, demanded of Spain, in effect if not in words, the relinquishment of her sovereignty over Cuba to the United States. The Spanish memorandum doubtless refers to the demand a copy of which was communicated by the Secretary of State of the United States to the Spanish Minister at Washington on the 20th of April last. The precise words of this demand are "that the Government of Spain at once relinquish its authority and Government in the Island of Cuba and Cuban waters;" and the demand is accompanied by the declaration that the United States, in taking the step, "disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people under such free and independent Government as they may establish."

To this demand the United States replied by a certain time "a full and satisfactory response **", whereby the ends of peace in Cuba shall be assured."

From the demands thus fully set forth, the Spanish memorandum extracts the

assertion by the United States of its determination "to leave the government and control of the island to its people," and, omitting both what precedes and what follows, construes that assertion as a demand "that such relinquishment must be made through them" (the United States). The demand as a whole, however, carefully and clearly excludes this construction. Not only is the assertion preceded, in the same sentence, by an express disclaimer on the part of the United States of any disposition or intention to take the sovereignty of the island, but the assertion itself includes an express declaration of a determination to allow the island to remain, after pacification, "under such free and independent Government" as may be established by its people.

To this construction of the demand we may apply a simple test. If Spain had answered that she would relinquish her sovereignty over the Island of Cuba, and had at the same time declared that it was not her intention to relinquish it to the United States, would any one have imagined that she had failed to make a "full and satisfactory response" to the demand?

II.

The second part of the Spanish memorandum is devoted to an argument to maintain the proposition that "the cession and relinquishment of sovereignty embraces the cession and relinquishment of the rights and obligations constituting it."

The American Commissioners are not disposed to comment upon the indefiniteness of this proposition, or upon the fallacies involved in treating the obligations which a sovereign may incur in the exercise of his sovereignty as a part of the sovereignty itself. National sovereignty (*soberanía nacional*), as defined by high Spanish authority (*Novísimo Diccionario enciclopédico de la lengua castellana*, por D. Delfín Donadín y Buignau, based on the Dictionary of the Spanish Academy), is "the right which a nation has of organizing the public powers in such a way as it may deem advisable." This right, though it includes the power to contract obligations, is in no sense composed of them. The thing done in the exercise of sovereignty is not a part of the sovereignty itself; the power to create is not the thing created. Nor is it possible to shut our eyes to the fact that in the Spanish memorandum the term obligations is used indiscriminately in respect of two different things, namely, the duties which a sovereign as such owes to his subjects, and the debts which he may specially contract in the exercise of his sovereign power for his own purposes.

With these preliminary observations, the American Commissioners proceed to the consideration of the specific matter before them.

The American Commissioners note the declaration in the Spanish memorandum that there is no purpose now to transfer with the sovereignty of Cuba and Porto Rico a proportional part of the national debt of Spain, but "only the obligations and charges attaching individually to the islands," which obligations and charges it likens to the local debts which pass with ceded territory. It appears, however, by the explanation given in the memorandum of the origin of these charges and obligations, and of the manner in which they were contracted, that they include the whole of what is commonly called the Cuban debt. The American Commissioners, therefore, while reaffirming their position as to the exclusion by the Protocol of any proposal for the assumption of such charges and obligations, will examine the subject in some of its aspects.

It is true that the financial department of the Island of Cuba, commonly called the "Cuban Treasury," was not a branch of the Spanish Treasury, but it is equally true that it was accountable to the Spanish Secretary for the Colonies, the Ministro de Ultramar, and that it was managed by a body of officials appointed by the Crown, at whose head was a high functionary, called Intendente General de Hacienda. In each year a budget was made up by the Spanish Colonial Secretary on data furnished by the Intendente General, and this budget was submitted to and acted upon by the Cortes. If in any year the revenues collected in Cuba were insufficient to meet the burdens imposed upon them, the deficit was charged to the island, and formed a new item of the Cuban debt. It thus appears that the finances of the island were exclusively controlled by the Spanish Government, and that the debt was in no sense created by Cuba as a province or department of Spain, or by the people of the island. In reality it is notorious that the denial to Cuba of any financial autonomy and of any power to protect herself against the imposition by Spanish officials of enormous burdens for purposes foreign and adverse to her interests, has been the most prolific source of discontent in the island. The debt-creating power, such as commonly belongs to communes or municipal corporations, never was delegated to Cuba. Such a thing as a Cuban obligation, created by the island in the exercise of powers either inherent or delegated, is unknown to the markets of the world.

Having briefly sketched the system of financial administration with respect to Cuba, we may consider the origin of the debt.

Prior to 1861 no so-called Cuban debt existed.

The revenues of the island were as a rule far more than sufficient to pay the expenses of its government, and produced in each year a surplus. This surplus was not expended for the benefit of the island, but was sent to Madrid. The surpluses thus disposed of amounted, from 1856 to 1861 inclusive, to upward of \$20,000,000.

In 1864, in order to meet the national expenses of the attempt to "reincorporate" San Domingo into the Spanish dominions, and of the "expedition to Mexico," the Spanish authorities issued bonds to the amount of \$3,000,000. Subsequently new loans were made, so that the so-called Cuban debt had swollen by 1868 to \$18,000,000.

In that year the ten years war for Cuban independence broke out, a war produced by causes so generally conceded to be just as to need no exposition on this occasion. All the expenses of this war were imposed upon Cuba, so that in 1880, according to a statement made at Madrid in that year by the Spanish Secretary for the Colonies, the so-called Cuban debt amounted to upward of \$170,000,000.

Subsequently the Spanish Government undertook to consolidate these debts, and to this end created in 1886 the so-called *Billetes hipotecarios de la Isla de Cuba*, to the amount of 620,000,000 pesetas, or \$124,000,000. The Spanish Government undertook to pay these bonds and the interest thereon out of the revenues of Cuba, but the national character of the debt was shown by the fact that, upon the face of the bonds, "the Spanish nation" (*la Nación Espanola*) guaranteed their payment. The annual charge for interest and sinking fund on account of this debt amounted to the sum of 39,101,000 pesetas, or \$7,838,200, which was disbursed through a Spanish financial institution, called the *Banco Hispano-Colonial*, which is said to have collected daily from the custom house at Havana, through an agency there established, the sum of \$33,339.

In 1890 a new issue of bonds was authorized by the Spanish Government, to the amount, as it is understood, of 875,000,000 pesetas, or \$175,000,000, with the same guarantee as before, apparently with a view to refund the prior debt, as well as to cover any new debts contracted between 1886 and 1890. It seems, however, that only a small number of these bonds had been disposed of when in February, 1895, the last insurrection and movement for independence broke out. The Government of Spain then proceeded to issue these new bonds for the purpose of raising funds with which to suppress the uprising, so that those outstanding on January 1, 1898, amounted, according to published reports, to 858,550,000 pesetas, or \$171,710,000. In addition to these a further loan, known as the "Cuban War Emergency Loan," was, as the American Commissioners are advised, floated to the amount of 800,000,000 pesetas, or \$160,000,000, represented by what are called "five per cent peseta bonds."

Although it does not appear that any mention is made in these bonds of the revenues of Cuba, it is understood that they are regarded in Spain as properly constituting a part of the "Cuban Debt," together with various unliquidated debts, large in amount, incurred by the Spanish authorities in opposing by arms the independence of Cuba.

From no point of view can the debts above described be considered as local debts of Cuba or as debts incurred for the benefit of Cuba. In no sense are they obligations properly chargeable to that island. They are debts created by the Government of Spain, for its own purposes and through its own agents, in whose creation Cuba had no voice.

From the moral point of view, the proposal to impose them upon Cuba is equally untenable. If, as is sometimes asserted, the struggles for Cuban independence have been carried on and supported by a minority of the people of the island, to impose upon the inhabitants as a whole the cost of suppressing the insurrections would be to punish the many for the deeds of the few. If, on the other hand, those struggles have, as the American Commissioners maintain, represented the hopes and aspirations of the body of the Cuban people, to crush the inhabitants by a burden created by Spain in the effort to oppose their independence would be even more unjust.

The American Commissioners deem it unnecessary, after what has been stated, to enter into an examination of the general references, made in the Spanish memorandum, to cases in which debts contracted by a State have, upon its absorption, been assumed by the absorbing state, or to cases in which, upon the partition of territory, debts contracted by the whole have been by special arrangement apportioned. They are conceived to be inapplicable, legally and morally, to the so-called "Cuban Debt," the burden of which, imposed upon the people of Cuba without their consent and by force of arms, was one of the principal wrongs for the termination of which the struggles for Cuban independence were undertaken.

The American Commissioners have deemed it due to the Spanish Commissioners and to themselves to make these observations upon the general subject of Cuban

"charges and obligations," apart from the special circumstances under which the present negotiations were begun. But, as they have heretofore stated, they consider the subject to be disposed of beyond all question by the Protocol. The suggestion that their Government should assume, either for itself or for Cuba, or Porto Rico, the burden of the "charges and obligations" now in question was not put forward during the negotiations that resulted in the conclusion of that convention, nor, if it had been so put forward, would it have been for a moment entertained by the United States.

From unselfish motives, of which it is unnecessary to make a renewed declaration, the Government of the United States, at great sacrifice of life and treasure, has prosecuted the conflict which followed its demand for the relinquishment by Spain of sovereignty over Cuba.

One of the results of that conflict is the unconditional agreement, embodied in the first article of the Protocol, that Spain "will relinquish all claim of sovereignty over and title to Cuba." Upon the simple fulfilment of that stipulation the American Commissioners are obliged to insist.

True copy:

JOHN B. MOORE.

Protocol No. 6.

CONFERENCE

Of October 17, 1898.

Present—

On the part of the United States:

**Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

On the part of Spain:

**Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
CERERO.**

Messrs. VILLA-URRUTIA and OJEDA
were absent because of illness.

The protocol of the preceding session was read and approved.

The President of the Spanish Commission stated that, without making any formal protest, he desired to bring to the attention of the American Commissioners the fact that he had received from his Government a telegram referring to reports to the effect that two American men-of-war were about to leave American ports with reinforcements of troops for the garrison at Manila, and that Spanish prisoners in the possession of the Tagalos are ill-treated. He would not read the telegram, but as such reports tended to excite the public mind and embarrass the efforts to establish peace and concord between the two nations, he hoped that the American Commissioners would bring the matter to the knowledge of their Government.

The President of the American Commission replied that the American Commissioners possessed neither information nor instructions such as would enable them to deal with the subject, which properly belonged to the two Governments, but that, prompted by motives similar to those avowed by the President of the Spanish Commission, they would communicate to their Government the fact that the reports in question had been brought to their attention.

The discussion of the business before the Joint Commission having been resumed, the Spanish Commissioners stated that although the articles presented by them were not couched in the same words as the Protocol of August 12, 1898, and the propositions in the notes preceding its conclusion, the sense was, in their opinion, the same. Still, they were ready to withdraw

Protocol No. 6.

CONFERENCIA

Del 17 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

**los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

Por parte de Espana:

**los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
CERERO.**

Los Comisarios espanoles informan a los americanos que los Senores Villa-Urrutia y Ojeda no pueden asistir a la conferencia por hallarse enfermos.

Se leyó y fue aprobada el acta anterior.

El Senor Presidente de la Comision espanola, sin hacer una reclamacion concreta, llama la atencion de los Senores Comisarios americanos acerca de un telegrama que ha recibido del Gobierno espanol relativo al envio a Manila de dos buques de guerra americanos y refuerzos de tropas a la guarnicion de Manila, asi como a los malos tratamientos de que son victimas los espanoles prisioneros de los tagalos, y sin leer dicho telegrama, ruega a los Senores Comisionados americanos lo pongan en conocimiento del Gobierno de Washington a fin de evitar que esos hechos fomenten la efervescencia del espiritu publico y enardeciendo las pasiones creen dificultades para la obra de paz y concordia entre ambas naciones.

El Senor Presidente de los Comisarios americanos manifiesta en contestacion que carecian de informes e instrucciones necesarios para tratar tal asunto, de la competencia unica de los dos Gobiernos, pero que inspirandose en iguales fines, o sea conseguir una paz duradera, comunicara a Washington los deseos expresados por los Senores Comisarios espanoles.

Entrando en la orden del dia, la Comision continuo la deliberacion iniciada en la conferencia anterior, manifestando el Senor Presidente de los Comisarios espanoles, que si bien el articulado que habian propuesto no estaba redactado en las mismas palabras empleadas en el Protocolo de 12 de Agosto de 1898, y en los despachos que mediaron para llegar a su conclusion, en

their articles, and to substitute for them articles more nearly in conformity with the language of the Protocol.

The American Commissioners, in response to this statement, presented a paper, copy of which is hereto annexed, in which, while recognizing the fact that the Government of the United States assumed all responsibilities for protection of life and property that legally attach to it during the occupation of Cuba, they finally declined to assume the burden of the so-called Cuban debt, either for the United States or for Cuba, and offered as a substitute for the articles previously presented by them the precise stipulations of Articles I and II of the Protocol, as to Cuba, Porto Rico and other islands in the West Indies, and the island to be ceded in the Ladronez.

The Spanish Commissioners stated that they reserved the right to examine this proposal and to present another draft of articles which should conform to the Protocol.

The conference was then adjourned to the 19th instant, at two o'clock, p. m.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

su opinion, el sentido es el mismo, pero que estaban dispuestos a retirarlas o reformarlas mas en consonancia con los terminos usados en el texto del Protocolo.

En contestacion los Comisarios americanos presentaron un documento de que es copia anexa, en el cual, al propio tiempo que declaran que el Gobierno de los Estados Unidos asume las responsabilidades inherentes a la proteccion de vidas y haciendas en Cuba, mientras dure la ocupacion de Cuba, declinan finalmente el asumir la carga de la Dueda cubana, tanto para los Estados Unidos como para Cuba. Asimismo proponen sustituir los articulos propuestos por ellos con las estipulaciones precisas de los Articulos I y II del Protocolo referentes a Cuba, Puerto Rico e islas de las Antillas y la isla de las Ladronez que ha de ser cedida.

Los Comisarios espanoles manifestaron que se reservaban el derecho de estudiar la mocion presentada, a fin de presentar otro proyecto de articulos con arreglo al Protocolo, levantandose la sesion despues de haber convenido el volver a reunirse el dia 19 del corriente a las 2 de la tarde.

Firmado: E. MONTERO RIOS.
H. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

Annex to Protocol No. 6.

The American Commissioners having listened with great respect to the arguments orally urged by the Spanish Commissioners in support of the articles offered by them, as well as duly considered the written memorandum submitted in support of the same, must adhere to the rejection thereof as stated in the memorandum of the American Commissioners read to the Commission and attached to the protocol of the 11th instant. The chief additional reason adduced in the oral presentation for the acceptance of sovereignty by the United States in Cuba is that without such acceptance the people of Cuba notably of Spanish origin will have no protection of person and property. The United States recognizes in the fullest measure that in requiring the relinquishment of all claim of Spanish sovereignty and the evacuation of the Island of Cuba it has assumed all the obligations imposed by the canons of international law and flowing from its occupation. The United States, so far as it has obtained possession, has enforced obedience to law and the preservation of order by all persons. It has no disposition to leave the Island a prey to anarchy or misrule.

As the Spanish Commissioners strenuously urge that the acceptance of sovereignty includes the assumption of the so-called Cuban debt, and as it is evident that this question divides the Commission and stays its progress, the American Commissioners, having carefully considered the arguments of the Spanish Commissioners, must again and finally decline to accept this burden either for the United States or Cuba. In the articles proposed by the American Commissioners on the third instant there were contained certain stipulations which, the American Commissioners believed, while not enlarging the Protocol, would effectually preserve the evidence of title to property and make clear the nature of public property and rights included in the relinquishment of sovereignty and title. It having been urged that these, no less than the articles proposed by the Spanish Commissioners, enlarge the terms of the Protocol, the American Commissioners are now prepared, for the purpose of disposing of the question of Cuba, Porto Rico and Guam, simply to embody in the treaty the precise stipulations of the Protocol on those subjects, neither adding thereto nor subtracting therefrom.

The American Commissioners, therefore, offer as a substitute for the articles heretofore presented by them the following:

"ARTICLE I.—Spain hereby relinquishes all claim of sovereignty over and title to Cuba.

"ARTICLE II.—Spain hereby cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also the Island of Guam in the Ladrões."

True copy:

JOHN B. MOORE.

Protocol No. 7.

CONFERENCE

of October 21, 1898.

In the protocol of the conference of October 17, it is stated that an adjournment was taken to Wednesday the 19th. On the 18th of October the President of the Spanish Commission made to the President of the American Commission a request that the next meeting be postponed to the 21st of October, in order that the Spanish Commissioners might have an opportunity to prepare certain papers for submission to the Joint Commission.

The reassembling of the Joint Commission was therefore postponed until Friday, the 21st of October, at two o'clock, p. m., at which hour there were present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON,

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners stated that they had telegraphed to their Government the representations made to them by the Spanish Commissioners at the last session, as to the reports of the sending of two American men-of-war with reinforcements for the garrison at Manila and for the ill treatment of Spanish prisoners by the Tagalos, but that they had as yet received no reply, probably because of the absence of the President from Washington.

The Spanish Commissioners expressed their thanks for the action of the American Commissioners.

The Spanish Commissioners stated that they regretted to reject the proposals presented by the American Commissioners at the last session, and that they therefore presented certain articles as a substitute for the articles previously submitted by them in relation to Cuba and Porto Rico.

An adjournment was taken on Monday, the 24th of October, at two o'clock, p. m., in order that an opportunity might be afforded for the translation and examination of the new articles.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WM. P. FRYE,
GEO. GRAY,
WHITELAW REID,
JOHN B. MOORE.

Protocolo No. 7.

CONFERENCIA

Del 21 de Octubre de 1898.

En el acta de la sesion del 17 del corriente, se fijo el día 19 para la proxima conferencia, pero habiendo rogado el Presidente de la Comision espanola el día 18, al Presidente de la Comision americana, que se aplazase dicha conferencia para el 21, a fin de que los Comisionados espanoles pudiesen presentar en ella ciertos documentos, se convino en que se aplazase hasta dicha fecha y en virtud de este acuerdo se reunen hoy a las 2 de la tarde las dos Comisiones, hallandose presentes.

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Se leyó y fue aprobada el acta de la sesion anterior.

Los Comisionados americanos manifestaron que habian telegrafado a su Gobierno lo que los Espanoles les encargaron transmitirle respecto del envio de dos buques de guerra americanos con refuerzos para la guarnicion de Manila y del mal trato que a los prisioneros espanoles daban los Tagalos, pero que aun no habian recibido contestacion, debido probablemente a la ausencia de Washington del Presidente.

Los Comisionados espanoles expresaron con este motivo su agradecimiento a los americanos.

Los Comisionados espanoles manifestaron que sentian tener que rechazar los articulos presentados por los Comisionados americanos en la ultima sesion, y que en consecuencia presentaron entonces un nuevo proyecto de articulos de tratado destinado a sustituir a los que presentaron anteriormente, relativos a Cuba y a Puerto Rico.

Con el objeto de permitir la traduccion y el examen de estos nuevos articulos, se convino en que la proxima sesion tendria lugar el lunes 24 del corriente a las 2 p. m.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

COMISION

Para la Negociacion de la Paz Con los Estados Unidos.

ARTICULO I.

Su Majestad Catolica la Reina Regente de Espana, en nombre de su augusto hijo Don Alfonso XIII, Rey del Espana, constitucionalmente autorizada por las Cortes del Reino, renuncia a su soberania y a todo derecho sobre Cuba.

Los Estados Unidos de America, aceptando esta renuncia, reciben de Espana la Isla de Cuba para prestarle ayuda y direccion y tenderia en su dominio y gobierno hasta que, una vez realizada su pacificacion, dejen dicho dominio y gobierno al pueblo cubano.

ARTICULO II.

La renuncia y transferencia que hace Su Majestad Catolica y que aceptan los Estados Unidos de America, comprende:

1. Cuantas prerrogativas, atribuciones y derechos, correspondan a Su Majestad Catolica, como parte de su soberania sobre la Isla de Cuba sus habitantes.

2. Cuantas cargas y obligaciones pecuniarias pendientes al ratificarse este tratado de paz, que previo un minucioso examen de su origen, objeto y condiciones de su creacion, deban reputarse, segun derecho estricto e innegable equidad, distintas de las que son propias y peculiares del Tesoro de la Peninsula y haber sido siempre propias y peculiares de Cuba.

Para hacer el riguroso examen que se prescribe en el parrafo anterior, se nombrara por las dos Altas Partes contratantes una Comision de personas competentes e imparciales segun se determinara en el articulo correspondiente de este tratado.

ARTICULO III.

En cumplimiento de lo convenido en los dos articulos anteriores Su Majestad Catolica, en la representacion con que celebra este tratado, renuncia y transfiere a los Estados Unidos todos los edificios, muelles, cuarteles, fortalezas, establecimientos, vias publicas y demas bienes inmuebles que, con arreglo a derecho son de dominio publico, y que como de tal dominio publico, corresponden a la Corona de Espana en la Isla de Cuba.

Quedan por lo tanto exceptuados de esta renuncia y transferencia todos los derechos y bienes de cualquiera clase que sean que, hasta la ratificacion del presente tratado, hayan venido pacificamente poseyendo, en concepto de dueños, las Provincias, Municipios, Establecimientos publicos o privados, Corporaciones eclesasticas o civiles y cualesquiera otras colectividades que tengan legalmente personalidad juridica para adquirir y poseer bienes en la Isla de Cuba, y los particulares, cualquiera que sea su nacionalidad.

Su Majestad Catolica renuncia tambien y transfiere a los Estados Unidos, a quien se la entregaran por el Gobierno espanol, todos los documentos y titulos que se refieran exclusivamente a la soberania transferida y aceptada y todos sus derechos, que existen en los Archivos de la Peninsula. Habiendo de facilitarle copias cuando los Estados Unidos las reclamasen, de la parte correspondiente a dicha soberania que contengan los demas documentos y titulos que se refieran ademas a otros asuntos distintos de la Isla de Cuba y de su soberania y derechos, que existan en los mencionados Archivos. Una regla analogica habra reciprocamente de observarse a favor de Espana respecto a los documentos y titulos ajenos en todo o en parte a la Isla de Cuba que se hallen actualmente en sus Archivos y que interesen al Gobierno espanol.

Todos los Archivos y Registros oficiales, asi administrativos como judiciales, que estan a disposicion del Gobierno de Espana y de sus Autoridades en la Isla de Cuba, y que se refieran a la misma Isla o a sus habitantes y a sus derechos y bienes, quedaran sin reserva de ninguno de esta clase, a disposicion de los Estados Unidos para que los conserve o disponga de ellos con las mismas facultades que hasta ahora han tenido sobre los mismos el Gobierno espanol y sus autoridades. Los particulares, asi espanoles como cubanos, tendran derecho a sacar, con arreglo a las leyes, las copias autorizadas de los contratos, testamentos, y demas documentos que formen parte de los protocolos notariales o que se custodien en los Archivos administrativos y judiciales, bien estos se hallen en Espana o en la Isla de Cuba.

ARTICULO IV.

En compensacion de las perdidas y gastos ocasionados a los Estados Unidos por la guerra y a las reclamaciones de sus conciudadanos con motivo de los danos y perjuicios que hubiesen sufrido en sus personas y bienes durante la ultima insurreccion de Cuba, Su Majestad Catolica, en nombre y representacion de Espana, y constitucionalmente autorizada por las Cortes del Reino, cede a los Estados Unidos de America, y estos aceptan para si mismos, la Isla de Puerto Rico y las otras islas que actualmente estan bajo la soberania espanola en las Indias occidentales, si como la Isla de Guam, en el Archipiélago de las Marianas o Ladrones, que fue elegida por los Estados Unidos de America en virtud de lo convenido en el articulo II. del Protocolo firmado en Washington el 12 de Agosto ultimo.

ARTICULO V.

Esta cesion de la soberania sobre el territorio y habitantes de Puerto Rico y las demas islas mencionadas se entiende que consiste en la cesion de los derechos y obligaciones, bienes y documentos relativos a la soberania de dichas islas, iguales a los que respecto a la renuncia y transferencia de la soberania de la Isla de Cuba, se definen en los articulos anteriores.

Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

(Annex to Protocol No. 7.)

ARTICLE I.

Her Catholic Majesty, the Queen Regent of Spain, in the name of her August Son Don Alfonso XIII., King of Spain, thereunto constitutionally authorized by the Cortes of the Kingdom, relinquishes her sovereignty over and title to Cuba.

The United States of America, accepting said relinquishment, receive the Island of Cuba from Spain to lend it aid and guidance and hold it under their control and government until, the pacification thereof realized, they leave said control and government to the Cuban people.

ARTICLE II.

The relinquishment and transfer made by Her Catholic Majesty and accepted by the United States of America embrace :

1. All prerogatives, attributes and rights appertaining to Her Catholic Majesty as part of her sovereignty over the Island of Cuba and its inhabitants.

2. All pecuniary charges and obligations outstanding upon the ratification of this treaty of peace which, after a minute examination into their origin, purpose, and the conditions of their creation, should be held, pursuant to strict law and undeniable equity, to be distinct from such as are properly and peculiarly chargeable to the treasury of the Peninsula, and to have been always properly and peculiarly Cuban.

To make the strict examination provided for in the foregoing paragraph, the two High Contracting Parties shall name a Commission of competent and impartial persons in the manner to be determined in the proper article of this treaty.

ARTICLE III.

In obedience to the stipulations of the two preceding articles, Her Catholic Majesty, in the representative character with which she concludes this treaty, relinquishes and transfers to the United States all the buildings, wharves, barracks, forts, establishments, public highways and other immovable property which in conformity with law are of the public domain, and which belong of the public domain belong to the Crown of Spain in the Island of Cuba.

Therefore there are excepted from this relinquishment and transfer all rights and property of whatsoever kind which up to the ratification of this treaty may have been peacefully enjoyed as owners by the provinces, municipalities, public or private establishments, ecclesiastical or civil bodies and any other associations having legal capacity to acquire and possess property in the Island of Cuba, and private individuals, whatever may be their nationality.

Her Catholic Majesty also relinquishes and transfers to the United States, to which they shall be delivered by the Spanish Government, all documents and titles

exclusively referring to the sovereignty transferred and accepted, and to all its rights, which may exist in the archives of the Peninsula. Copies of the part relative to the said sovereignty which may appear in other documents, and titles which refer moreover to other matters distinct from the Island of Cuba or its sovereignty and rights, existing in said archives, must also be furnished when the United States shall require the same. A like rule must be reciprocally observed with respect to Spain in so far as relates to documents and titles unconnected in whole or in part with the Island of Cuba that may now be in its archives and which are of interest to the Spanish Government.

All official archives and records, executive as well as judicial, at the disposal of the Government of Spain and of its authorities in the Island of Cuba, and which refer to the said island or its inhabitants, their rights and property, shall remain without any reservation whatever of this kind at the disposal of the United States, to preserve the same or dispose of them with the same authority exercised over them up to the present time by the Spanish Government and its authorities. Private parties, Spaniards as well as Cubans, shall have the right to make in accordance with law authenticated copies of the contracts, wills, and other instruments forming part of notarial protocols or files, all of which may be in the executive and judicial archives, be the latter in Spain or in the Island of Cuba.

ARTICLE IV.

As compensation for the losses and expenses occasioned the United States by the war and for the claims of its citizens by reason of the injuries and damages they may have suffered in their persons and property during the last insurrection in Cuba, Her Catholic Majesty, in the name and representation of Spain, and thereunto constitutionally authorized by the Cortes of the Kingdom, cedes to the United States of America, and the latter accept for themselves, the Island of Porto Rico and the other islands now under Spanish sovereignty in the West Indies, as also the Island of Guam in the Mariana or Ladronez Archipelago, which island was selected by the United States of America in virtue of the provisions of Article II. of the Protocol signed in Washington on August 12 last.

ARTICLE V.

This cession of the sovereignty over the territory and inhabitants of Porto Rico and the other islands mentioned is understood to embrace the cession of the rights and obligations, property and documents relating to the sovereignty of said islands alike in all respects to the relinquishment and transfer of the sovereignty of the Island of Cuba as defined in the foregoing articles.

True copy :

EMILIO DE OJEDA.

Protocol No. 8.

CONFERENCE

of October 24, 1898.

Present—

On the part of the United States :

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain :

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners stated that they had carefully considered the articles tendered by the Spanish Commissioners at the last meeting, by which, while Spain was to relinquish sovereignty over Cuba, such relinquishment was to be accepted by the United States and was to include such charges and obligations, outstanding at the ratification of the treaty, as should be held by a Commission not to be properly and peculiarly chargeable to the treasury of the Peninsula, but to be properly and peculiarly Cuban, and that they must reject the articles in question as well as any articles that required the United States to assume, either for itself or for Cuba, the so-called Cuban debt. They were willing, however, to add to the articles in which Spain relinquished sovereignty over and title to Cuba a suitable stipulation by which the United States would assume the obligations as to the protection of life and property imposed by its occupation, so long as such occupation should continue.

After much discussion, the President of the Spanish Commission stated that the Spanish Commissioners did not care for the phraseology in which the relinquishment of sovereignty was expressed, so long as it embraced an obligation as to debts, such as was stated in the second of the articles presented by them.

The President of the American Commission, replying to this statement, inquired whether the President of the Spanish Com-

Protocol No. 8.

CONFERENCIA

Del 24 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America.

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FURGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

Los Comisionados americanos manifestaron que habian examinado con todo detenimiento los articulos presentados por los Comisionados espanoles en la ultima sesion, en los cuales Espana hacia el abandono de su soberania sobre Cuba que debia ser aceptada por los Estados Unidos comprendiendose en dicho abandono y en su aceptacion todas las cargas y obligaciones existentes al tiempo de la ratificacion del tratado, que una Comision especial hubiera de considerar como no pertenecientes ni afectas al Tesoro de la Peninsula, sino como inherentes y peculiares del de Cuba, anadiendo los Comisionados americanos que se velan precisados a rechazar los articulos en cuestion, asi como cualesquiera otros en los que se exigiera a los Estados Unidos que asumiesen, ya sea para si, ya para Cuba, las cargas de la Deuda cubana, pero que estaban sin embargo dispuestos a anadir al articulo en que Espana hacia el abandono de su soberania y derechos sobre Cuba, una estipulacion por la cual los Estados Unidos asumirian sobre si las obligaciones relativas a la conservacion de las vidas y propiedades de los habitantes de Cuba, que les imponia su ocupacion mientras esta durase.

Despues de una prolongada discusion, manifesto el Presidente de los Comisarios espanoles que la Comision espanola no daba importancia a la fraseologia en que se expresara el abandono de soberania, siempre que comprendiese el tratado una obligacion respecto de las deudas, tal como figuraba en el articulo 2d del proyecto de articulos presentado.

El Presidente de la Comision americana contesta a esta declaracion preguntando si el Presidente de la Comision espanola, en-

mission intended thereby to say that the Spanish Commissioners would refuse to consider any articles as to Cuba and Porto Rico which contained no provision for the assumption of indebtedness by the United States, or Cuba, or both.

The Spanish Commissioners having asked for time in which to reply to this inquiry, the conference was adjourned to Wednesday, October 26, at four o'clock, p. m.

Signed : WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

tendia decir con esto que los Comisarios espanoles se negaban a tomar en consideracion cualesquiera articulos respecto de Cuba o Puerto Rico que no contuviesen una disposicion por la que asumiesen sus deudas los Estados Unidos o Cuba o ambos.

Los Comisionados espanoles habiendo pedido un plazo para contestar a esta pregunta, se fijo la proxima conferencia para el miercoles 26 de Octubre a las 4 p. m.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

Protocol No. 9.

CONFERENCE

Of October 26, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The Spanish Commissioners filed under the rules a memorandum, copy and translation of which are hereto annexed, giving their reasons in support of the articles presented by them on the 21st of October, and rejected by the American Commissioners on the 24th.

The American Commissioners stated that they would file under the rules a written reply, which should be annexed to the protocol.

The Spanish Commissioners then made to the inquiry addressed to them by the American Commissioners, at the close of the last session, the following reply:

"The Spanish Commissioners, having become acquainted with the question propounded to them at the end of the last conference by the President of the American Commission,—having read it and studied it in order to understand with all clearness its meaning and its scope;

"Considering that in the conference held by the two Commissions on the 14th of this month it was resolved that no agreement reached upon any article should be considered as the final expression of the views and opinions of either Government on the points and matter contained therein, until after an agreement should be reached on all other articles of the treaty, or in other words, upon the whole of it;

"Considering, therefore, that the question propounded by the President of the American Commission cannot now be given any answer, which without violation of the resolution unanimously adopted by the two Commissions at the aforesaid conference of the 14th instant may involve the final

Protocolo No. 9.

CONFERENCIA

Del 26 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

Los Comisarios espanoles presentaron para su insercion en el protocolo segun reglamento un Memorandum cuya copia y traduccion son anexos, en el cual exponen sus razones en apoyo de los articulos presentados por ellos el 21 del corriente y rechazados por los Comisarios americanos el 24.

Los Comisarios americanos ofrecieron dar su contestacion escrita conforme al reglamento, copia y traduccion de la cual formaran parte del protocolo general de las conferencias.

Los Comisarios espanoles dieron a la pregunta que al fin de la sesion anterior les dirigió la Comision americana la contestacion siguiente:

"Enterados los Comisarios espanoles de la pregunta que, al terminar la ultima conferencia, les hizo el Senor Presidente de la Comision americana, y despues de haberla leido y estudiado aquellos para comprender con toda claridad su sentido y alcance:

"Considerando que en la conferencia celebrada por ambas Comisiones el dia 14 de este mes, se convino en que el acuerdo de cualquier articulo no podria considerarse como expresion definitiva de las miras y opiniones de uno u otro Gobierno sobre los puntos y materia contenida en dicho articulo, si no se llegaba a convenir en todos los del tratado, o sea en su totalidad;

"Considerando por lo tanto que la pregunta hecha por el Senor Presidente de la Comision americana no puede tener ahora una contestacion que implique una aprobacion definitiva del articulo o articulos a que dicha pregunta se refiere, a no infringirse lo convenido por unanimidad por ambas

approval of the article or articles to which the question refers;

"Considering, furthermore, that even in case such resolution as the above had not been agreed upon by the Commissioners, its adoption would have been required by the very nature and essence of the mission entrusted to them, which is to frame a treaty of peace, settling not only the question of the articles, but also that of the Philippine Islands and all other questions, even of lesser importance, which may exist between the two High Contracting Parties;

"Considering that this treaty is not to be framed, as no other treaty has or ever can be framed, upon the exclusive basis of strict justice, as understood by each party, but also upon the basis of the advantage to be derived by either or by both, thus modifying in harmony therewith the demands of strict law; and that, therefore, the Spanish Commissioners, although understanding that strict law decides the question of the Cuban debt in their favor, are in duty bound and are willing to moderate the said strictness in view of the advantages which Spain may derive from other stipulations of the treaty which, without being prejudicial to the United States, may be favorable to Spain;

"Considering, therefore, that the article or articles to which the President of the American Commission refers cannot at this time be the subject of final approval, since they must remain subject to the others to be included in the same treaty, meeting the approval of both High Parties:—

"The Spanish Commissioners answer the said question by stating that, reiterating their conviction that pursuant to law the colonial obligations of Cuba and Porto Rico must follow these islands and their sovereignty, they do not refuse 'to consider any articles as to Cuba and Porto Rico which contain no provision for the assumption of indebtedness by the United States, or Cuba, or both,' subordinating the final approval of such articles to that of the others which are to form the complete treaty; and they therefore invite the American Commissioners to enter upon the discussion of the other points to be embodied in the treaty, and at the outset to take up the discussion of the Philippine Archipelago, and to propose to the Spanish Commissioners what they understand should be agreed upon in said treaty with respect to this subject."

The American Commissioners, after the reading of this paper, inquired whether they were to understand that the Spanish Commissioners accepted the articles previously presented by them as to Cuba, Porto Rico and Guam.

Comisiones en la conferencia sobredicha del 14 de este mes;

"Considerando ademas, que aunque así aquellos no lo hubieran convenido, lo exigía la índole y la propia esencia de la misión que les ha sido confiada y que consiste en elaborar un solo tratado de paz en que queden resueltas no solo la cuestión de las Antillas, sino también la de Filipinas y cualesquiera otra, aunque sea menos importante que exista entre las dos Altas Partes;

"Considerando que no habiendo de elaborarse este tratado, como nunca se ha elaborado ni puede elaborarse ninguno, con el único criterio de la rigurosa justicia que cada una de las Partes pueda entender que le asista, sino también con el de la conveniencia de cada una de ellas y aun de ambas, para modificar a su tenor las exigencias del criterio meramente jurídico, y que, por consiguiente, sobre la cuestión relativa a la deuda de Cuba, los Comisarios españoles, que entienden que el Derecho la resuelve a su favor, tienen el deber y están dispuestos a cumplir lo, de moderar este rigor, por las conveniencias que para España puedan surgir de otras estipulaciones del tratado, que, sin ser perjudiciales a los Estados Unidos, puedan ser favorables a España;

"Considerando por lo tanto, que el artículo o artículos a que se refiere la pregunta del Señor Presidente de la Comisión americana, no pueden ser por hoy objeto de una aprobación definitiva, puesto que no pueden menos de quedar subordinados a que los demás que han de ser incluidos en el mismo tratado merezcan también la aprobación de ambas Altas Partes:

"Los Comisarios españoles contestan a la sobredicha pregunta diciendo que afirmando su convicción de que con arreglo a Derecho las obligaciones coloniales de Cuba y Puerto Rico deben pasar con estas islas y su soberanía no rehúsan 'tomar en consideración cualquier otro artículo relativo a Cuba y Puerto Rico, que no contenga la cláusula de asumir las cargas por los Estados Unidos o por Cuba o por ambos,' subordinando la definitiva aprobación de tal artículo a la de los demás que hayan de formar la totalidad del tratado; e invitan, en su consecuencia, a los Señores Comisarios americanos, a que se proceda a la discusión de los demás puntos que en el tratado se han de comprender, y desde luego a la del relativo al Archipiélago Filipino, proponiendo a los Comisarios españoles lo que entiendan que debe convenirse en aquel sobre este asunto."

Después de dada lectura de esta contestación, los Comisarios americanos preguntaron si debían entender por ella que los Comisarios españoles aceptaban los artículos presentados por la Comisión americana relativos a Cuba, Puerto Rico y Guam.

The Spanish Commissioners replied that they accepted them in the sense stated in the paper—provisionally, subject to the conclusion of a treaty of peace.

On motion of the American Commissioners, the conference was adjourned to the 27th of October, at two o'clock p. m.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELOW REID.
JOHN B. MOORE.

Los Comisarios espanoles contestaron que los aceptaban en el sentido expresado en su documento, y subordinada su aceptacion a la aprobacion de los demas articulos que haya de contener el tratado de paz.

A propuesta de los Comisarios americanos, se aplazo la proxima conferencia para el 27 de Octubre a las 2 p. m., a fin de que los Comisarios americanos pudieran estudiar con todo detenimiento la contestacion dada por los Comisarios espanoles.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL OBERRO,
EMILIO DE OJEDA.

COMISION

Para la negociacion de la paz con los Estados Unidos.

MEMORANDUM

Presentado en la sesion de 26 de Octubre 1898.

Los Comisarios espanoles se han enterado con verdadera pena del Memorandum presentado por los Senores Comisarios americanos en la conferencia ultima celebrada en 17 del corriente. En este documento dichos Senores, fundandose en afirmaciones y apreciaciones con cuya exactitud la Comision espanola no puede manifestarse conforme, a pesar de la recta intencion con que, no duda, que fueron expuestas, concluyen aquellos por manifestar que sustituyen el proyecto de los dos articulos sobre Cuba y las demas Islas, que habian presentado en la conferencia de 3 del corriente, con otros dos, reducidos a la copia literal de los dos primeros articulos del Protocolo de Washington, alegando para esto que entienden que el tratado de paz, en cuanto se refiere a la soberania de las Antillas y de la Isla de Guam en las Mariaras, no debe contener mas ni menos que la reproduccion literal de aquellos dos articulos.

Mas como estos ya forman parte de un Convenio obligatorio cual lo es el Protocolo de Washington, parece inutil hacer de ellos una mera reproduccion en el tratado que ha de celebrarse en la conferencia. Los contratos, asi en el orden privado como en el internacional, son perfectos, y producen todos sus efectos para las partes que los hayan otorgado, sin necesidad de ninguna confirmacion posterior que en nada puede aumentar su eficacia. Parece, por esto, redundante esta reproduccion, si a ella se ha de limitar el tratado de paz sobre las Antillas, como quieren los Senores Comisarios americanos.

Si esta consideracion es de pura razon y aun de mero buen sentido, la propuesta de los Comisarios americanos no se comprende sino en el supuesto de que estos entienden que el tratado, aparte de cualquier disposicion de caracter secundario que en el pueda incluirse, no debe versar mas que sobre el Archipiélago Filipino.

Si tal es el pensamiento de la Comision americana, la espanola no puede prestarle su asentimiento porque entiende que su ejecucion seria una infraccion del Protocolo.

Despues de las tres condiciones que el Senor Secretario de Estado de Washington, contestando en 31 de Julio ultimo al mensaje del Gobierno de Su Majestad Catolica, de 22 del mismo mes, propuso a Espana para terminar la guerra, dijo: "Si las condiciones ofrecidas aqui son aceptadas en su integridad, los Estados Unidos nombraran Comisarios que se encontraran con los igualmente autorizados por Espana, con objeto de arreglar los detalles del tratado de paz y de firmarlo en las condiciones arriba expresadas." Estos detalles no aparecen circunscritos al archipiélago.

El propio Senor Presidente de la Republica americana, en la conferencia que celebro el 10 de Agosto con el Senor Embajador de Francia, representante de Espana para el caso, distinguió perfectamente el Protocolo del tratado de paz, diciendo que aquel debia ser un mero documento preliminar que no tendria por objeto mas que consagrar sin dilacion alguna el acuerdo de los dos Gobiernos sobre los principios mismos de la paz, y que, por lo tanto, no seria necesario reservar en el, ni los derechos de las Cortes, ni los del Senado federal, o llamados unicamente a ratificar el tratado definitivo.

El Senor Presidente, es verdad, hablo del asunto de las Filipinas para decir que quedaba reservado a la conferencia de Paris, pero nunca dijo, ni indico siquiera, que este asunto habria de ser el unico que se trataria en esta conferencia.

Y finalmente en el articulo 5 del Protocolo, redactado de conformidad con todos estos precedentes, se dice que los Comisarios nombrados por ambas Altas Partes habrian de proceder en Paris a negociar y concluir un tratado de paz, sin limitar ni concretar su objeto y empleando, por la inversa, una frase cuyo evidente sentido es que en el tratado de paz que se elaborase por la Comision habian de resolverse todas las cuestiones, a la sazón pendientes, entre los dos Estados, que no estuviesen resueltas ya en el acuerdo preliminar del Protocolo.

Cierto es que los Senores Comisarios americanos fundan precisamente su ultimo proyecto en la consideracion de que todo lo relativo a las Antillas espanolas ya fue

resuelto en el Protocolo. Mas a esta consideracion es precisamente a la que desde la primera conferencia no han podido ni pueden prestar su asentimiento los Comisarios espanoles.

Los americanos en su Memorandum de 11 de este mes manifestaron que los Comisarios espanoles ponian en su proyecto condiciones a la renuncia de la soberania en Cuba. Gravisimo error. En aquel proyecto no se desconoce el caracter puro e incondicional de tal renuncia: lo unico que alli se hace es consignar en lo que esta renuncia consiste. Y esto es esencialmente diverso de lo que los Senores Comisarios americanos entienden.

Y que, efectivamente, los articulos del proyecto de los espanoles tiene por unico objeto fijar el sentido de la renuncia, pero no someterla a condiciones, esta demostrado por el objeto mismo de las discusiones orales y escritas que vienen mediando entre los unos y los otros.

Los Senores Comisarios americanos entienden que el unico sentido que puede darse a la renuncia de soberania convenida en el Protocolo es el propio del abandono de esta soberania; para deducir de aqui, que Espana debe abandonar la Isla de Cuba como cualquier potencia puede abandonar un territorio desierto del Africa que antes hubiera poseido.

Por mas que la Comision espanola distingue el sentido juridico de la palabra abandono del que es propio de la renuncia, no sostendria esta discusion tecnica, impropia de una conferencia diplomatica, si no fuera porque la Comision americana sostiene su opinion como el principal fundamento que da a su aspiracion de que, por tal supuesto abandono, quede cortado todo vinculo de derecho y ninguno nuevo surja de aquel acto, entre Espana y los Estados Unidos, al apoderarse de la Isla, bien en su propio nombre y para ellos mismos, bien en nombre y para el quebro cubano.

Pero esta aspiracion, sin ejemplo en los fastos diplomaticos del mundo, no pueden admitirla los Comisarios espanoles, dando por reproducido cuanto expusieron en el primer capitulo del Memorandum que presentaron en contra del proyecto de articulado de la Comision americana, y anaden las breves consideraciones siguientes que les sugieren los dos Memorandums ultimamente presentados por la misma.

Deja la espanola a un lado la cita que, en apoyo de su opinion, la Comision americana hace del Diccionario de Escribche, que es una obra muy respetable cleramente, pero cuyo unico objeto es la exposicion de la jurisprudencia practica del Derecho privado, exposicion muy popular, es verdad, en Espana, porque sirve de mentor a los jovenes abogados en el primer periodo de su vida profesional, pero que es completamente ajena a la ciencia del Derecho internacional y publico.

Casos de abandono, en el sentido que se pretende, no registra la historia moderna de los pueblos mas que los de territorios desiertos, o a lo sumo, poblados por las tribus barbaras del Africa. Abandono de un verdadero Estado, ya formado, de existencia secular, con una organizacion social y politica completa y poblado de habitantes que gozan y tienen derecho a gozar de todos los beneficios de la civilizacion moderna, no ha habido hasta ahora, ni creen los Comisarios espanoles que lo habra en el mundo.

Los territorios abandonados son legitimamente ocupados por el Estado que quiera establecer en ellos su soberania. Mas la ocupacion, meramente de hecho, no impone al ocupante otros deberes mas que los que en las regiones de Africa cumplen las potencias de Europa con las barbaras tribus que los pueblan o los recorren. Cree la Comision americana que los Estados Unidos en concepto de ocupantes de la Isla de Cuba, puesto que este es el unico en que segun el supuesto que defienden habran de posesionarse de ella, no han de tener para con los habitantes de la grande Antilla mas deberes que los que cumplen con aquellos degradados seres humanos?

Tenemos la completa seguridad de que no es tal el pensamiento de los Senores Comisarios americanos, pero a esta consecuencia fatalmente conduce a la Comision americana, su empeño en negar toda diferencia de derecho entre los efectos del abandono y los efectos de la renuncia.

A esta no obsta la protesta de los Senores Comisarios americanos en su ultimo Memorandum, afirmando que los Estados Unidos dispensaran a los habitantes de Cuba y a sus propietarios todo la proteccion que necesiten, como vienen haciendolo en la pequena porcion de territorio que en la Isla ya ocupan por la fuerza de las armas. Creen los Estados Unidos que a Espana con relacion a la Isla de Cuba y a sus habitantes, ne deben reconocerse por aquellos mas derechos al dejar su soberania, que los Estados Unidos o cualquiera otra potencia se apresurarian a reconocer a la mas desgraciada de las tribus africanas de cuyo territorio se apoderaron? Pero, aparte de que ellos mismos no dan a esta obligacion que dicen que tienen, mas fundamento que el hecho de ser poseedores de la Isla, lo cual confirma lo que acabamos de indicar, tambien es cierto que dichos Senores Comisarios no se prestan a que esta, ni otra obligacion alguna de los Estados Unidos, se consigne en el tratado que, segun exigen, ha de limitarse a la reproduccion de los dos primeros articulos del Protocolo.

Por lo tanto esa obligacion que en el Memorandum dicen que contraen no sera exigible por no constar en el tratado, y sin animo de ofensa para los Estados Unidos, la logica no permite que se niegue en absoluto, la posibilidad de que pase, en mas o en menos, con ella, lo que con las obligaciones que espontaneamente contrajeron los Estados Unidos en las negociaciones que prepararon el Protocolo y que, esto no obstante, los Senores Comisarios americanos se niegan a que consten en el tratado.

Las Camaras de los Estados Unidos en su resolucion conjunta, y el Senor Presidente de la Union en su ultimatum a Espana, pudo exigir a esta nacion, aunque inutil es decir que Espana no hubiera accedido a tan enorme exigencia, el abandono absoluto de su soberania en Cuba, en el sentido en que ahora lo exigen sus Comisarios, como pudo tambien exigirle su cesion franca y libre de toda carga a los Estados Unidos. Mas lo cierto es que no lo exigió, porque se limito a reclamarle la renuncia de su soberania para que el pueblo cubano fuera libre e independiente, o lo que es lo mismo, la renuncia de su soberania en favor del pueblo cubano, para que fuera libre e independiente, si bien al mismo tiempo, no consintio y antes bien exigió, que esta renuncia fuera, desde luego, hecha a favor de los Estados Unidos, para aquel pueblo a quien los Estados Unidos habian de prestar ayuda y direccion, porque no de otro modo era posible que la Isla de Cuba dejara de pasar directa e inmediatamente del poder de Espana al del pueblo cubano, para haber de permanecer en poder de los Estados Unidos hasta la pacificacion de la isla. Esto nos parece que los Senores Comisarios americanos no pueden menos de reconocerlo como rigurosamente exacto.

Y si tales fueron los terminos en que los Estados Unidos encerraron su exigencia a que al fin accedio Espana sin que aquellos los hubiesen previamente modificado, es claro como la luz del sol, que el convenio de que es formula el articulo 1 del Protocolo (pues otro no se celebro entre las dos Altas Partes) tiene necesariamente que entenderse en el sentido de los terminos en que fue propuesto por una de ellas, y aceptado por la otra, y que no solicito ahora a cualquiera de ellas alterar estos terminos con el fin de convertir aquella renuncia, exigida para un objeto determinado, y a tenor de un procedimiento establecido, en un abandono absoluto sin el objeto y procedimiento convenidos, como el que pretende la Comision americana que se haga.

No es pues el caso del abandono que la Comision americana exige, sino el de la renuncia convenida que la espanola sostiene, el que ha de consignarse en el tratado. Es un caso analogo a tantos otros por que han pasado las potencias coloniales cuando perdieron su soberania en todas o parte de sus colonias. Jamas una potencia colonial abandono, en el sentido que ahora se quiere imponer, una colonia para que se convirtiese en un nuevo Estado independiente y libre. Cuando esto sucedio, la Metropoli cedio o renuncio su soberania, si antes la colonia misma no la habia conquistado por la fuerza de las armas, pero jamas la abandono en el sentido sobredicho. Si los Senores Comisarios americanos no estan conformes con esta categorica afirmacion, les rogamos que nos citen un caso que la contradiga.

Los Comisarios espanoles ruegan tambien a los Senores Comisarios americanos que fijen su atencion, tan ilustrada y serena, en la contradiccion palpitante que resalta entre su teoria y los hechos que los Estados Unidos vienen llevando a cabo. Segun la Comision americana la unica situacion legal posible sobre la Isla de Cuba, entre Espana de una parte y los Estados Unidos por si, o en nombre del pueblo cubano, de la otra, es la siguiente: Espana debe abandonar la Isla de Cuba. Los Estados Unidos despues del abandono han de posesionarse de la Isla para el pueblo cubano.

Y por consiguiente el transito de la Gran Antilla de una a otra situacion ha de hacerse sin establecerse vinculo alguno de derecho entre Espana y su antigua colonia y por ella los Estados Unidos. Pues bien, las fuerzas de los Estados Unidos rindieron a Santiago de Cuba, y firmaron con las autoridades militares espanoles una capitulacion. En esta no exigieron que las fuerzas de la Metropoli abandonaran a Santiago de Cuba, sino que se lo entregaran a las autoridades americanas, formandose inventario, que firmaron ambas partes, en el cual consta cuanto la una entrego y la otra recibio. La Comision americana que esta en la Habana, por haber sido nombrada en cumplimiento de lo prescrito en el articulo 4 del Protocolo exige a la Comision espanola que le entregue todo lo que a Espana correspondia en uso de su soberania, asi en lo civil como en lo militar, y esto, en virtud de instrucciones expresas de su Gobierno, y por demas esta el decir que esta entrega, tambien ha de ser en forma de inventario.

Ante estos hechos es posible negar que Espana, al renunciar a su soberania en Cuba, exigen los Estados Unidos que se la entregue a ellos mismos?

Pues aun hay mas que esto: la Comision americana, a pesar de la teoria que sostiene, ha acomodado sus primeros actos a la que sostiene la espanola. En el parrafo 2 del articulo 1 que aquella presento en 3 de octubre, llama cesion (no abandono) a la renuncia de la soberania de Espana en Cuba. Y esto no se puede explicar por una simple incorreccion de lenguaje, porque en el articulo 2 fija cuales han de

ser los efectos de la cesion de la soberania de Puerto Rico, y emplear para fijar estos efectos, las mismas, exactamente las mismas frases, que acababa de emplear en el artículo 1 para fijar los de la renuncia de la soberania en Cuba. Prueba acabada de que, segun la Comision americana, a pesar de sus opiniones sostenidas al calor de la controversia con la espanola, al redactar su primer proyecto entendia que los efectos de la renuncia de la soberania eran los mismos, exactamente los mismos, que los de su cesion.

Y si quisiera decirse que aunque sean iguales los efectos, la renuncia, que la Comision americana llama abandono, se distingue de la cesion, en que aquella no se hace con relacion a nadie que haya de adquirir el territorio abandonado, y por el contrario, la cesion se hace a favor de quien haya de adquirir el territorio cedido, tampoco los Comisarios americanos marcaron esta diferencia en su proyecto, porque, hablando en ambos articulos de los Archivos y demas papeles que habian de ser objeto de la renuncia o cesion, dicen por igual en los dos, empleando las mismas frases, que toda copia legalizada de aquellos documentos que pudiera ser requerida por un funcionario del Gobierno espanol, se le expedira en todo tiempo, y esto es inintelligible sino en el sentido de que ha de haber quien pueda expedir tal copia. Y no sera posible esta expedicion sino por quien tenga en su poder el documento que ha de copiar. Y no pued tenerlo en su poder quien no lo haya recibido. Por consiguiente los Comisarios americanos al establecer en el artículo 1 las reglas concernientes a la entrega de los Archivos de la Isla de Cuba, partian del supuesto de que esa entrega habia de ser hecha a alguien. Y eso, y nada mas que eso, es lo que consignaron en el artículo 2, respecto a la entrega de los Archivos de la Isla de Puerto Rico.

La Comision americana acude para sostener su inaceptable opinion sobre el abandono por Espana de la Isla de Cuba, a la diferencia que consta en el Protocolo del mismo. Dicen que Espana se presto solamente a ceder a Puerto Rico a los Estados Unidos, entretanto que respecto a la Isla de Cuba se obligo a renunciarla. De esto deducen que los efectos de la obligacion de Espana, respecto a una Antilla, son mas amplios que respecto a la otra. Ya hemos probado con el texto propio del proyecto de articulado de dichos Senores que ni aun esta diferencia en los efectos con relacion a Espana entrevelan ellos, al redactar su proyecto, que existia. La diferencia, no obstante, se comprende bien bajo otro aspecto. Los Estados Unidos exigieron a Espana y despues le declararon la guerra para que Cuba fuera libre e independiente. Y claro es que habiendo vencido ya no podian exigirle que se la cediese, dejando a un lado la libertad e independencia de la Isla, porque esto daria motivo al mundo para creer que tal libertad e independencia no habia sido la verdadera causa del conflicto.

No le hicieron la misma exigencia respecto a Puerto Rico, y si reclamaron despues la soberania de la pequena Antilla, y de las demas que rodean a la Grande (y que haran en lo porvenir imposible su independencia, sin la voluntad y gracioso consentimiento de los Estados Unidos, que siempre la tendran a su merced, por su dominio sobre las que la rodean como un circulo de hierro), fue en concepto de indemnizacion de los gastos de la guerra, y de los perjuicios que decian que los ciudadanos americanos habian sufrido durante la insurreccion colonial. Esta es la natural explicacion de que en el Protocolo aparezca la soberania de una Isla como renunciada y la de las otras como cedida.

Los Comisarios espanoles entienden por todo lo dicho, que es para ellos un deber ineludible, el continuar sosteniendo que la renuncia de la soberania en Cuba, a que se obligo Espana en el artículo del Protocolo, debe entenderse no abandono de la soberania an el sentido que dan a la frase los Senores Comisarios americanos, sino en el de renuncia propiamente dicha, tal como se ha empleado en el ejemplar escrito en frances, que firmo tambien el Gobierno americano, y que por lo tanto no puede menos de aceptar como texto oficial. Por consiguiente, Espana tiene la obligacion de renunciar a la total soberania sobre la Gran Antilla, para que a esta obligacion corresponda otra por parte de los Estados Unidos, y es la de recibir la Isla en nombre y para el pueblo cubano, por el cual, aparte de los altos fines humanitarios que, segun afirman, inspiró su conducta, por mas que a ello no puedo asentir Espana, se constituyeron libremente y por su propia espontaneidad mandatarios con todas las obligaciones que se impone el "negotiorum gestor," (aunque segun persisten en afirmar no lo sean "in remsuam"), segun denomina el derecho a aquel que se encarga de reclamar y gestionar los intereses de otro, por mas que este no le haya conferido expresa y oficialmente su mandato.

Crean, por esto, los Comisarios espanoles que el contraproyecto del artículo primero que presentaron, esta redactado en el estricto sentido que tiene el artículo 1 del Protocolo, excepto en un importante punto de que pasan los Comisarios espanoles a ocuparse.

Los Estados Unidos de America exigieron a Espana, segun se ha dicho, la renuncia de la soberania en Cuba, en los terminos que en este Memorandum quedan expresados.

La Comision americana en su penultimo Memorandum dice, que si Espana hu-

biese accedido al ser requerida con el ultimatum, a abandonar la Isla de Cuba, sin entregarla a los Estados Unidos, todo el mundo hubiera creído que España accedía a cuanto se podía exigirle. Lo hubiera quizá creído todo el mundo, menos los Estados Unidos, porque no parece a la Comisión española que tenga necesidad de demostrar, que haya nadie, ni en Europa ni en América, que crea que los Estados Unidos se hubieran dado por satisfechos con que España se retirase de la Isla de Cuba, habiendo ellos de absuergir de toda intervención en la Grande Antilla, para que el pueblo que la habita continuase guerreando entre sí y haciendo de sí mismo y de sus destinos, en virtud de su natural derecho, el uso y el abuso que, supuesto que era independiente, podía hacer sin o contra la voluntad de los Estados Unidos.

De estos términos es indeclinable e inmediata consecuencia, que los Estados Unidos tienen que recibir la Isla de Cuba, no para conservarla para siempre, ni siquiera indefinidamente como propia, sino para ejercer su soberanía, mientras la Isla no este pacificada y para entregarla al pueblo que la habita tan pronto la pacificación se haya realizado.

Esto, pues, debe constar en el artículo primero del tratado relativo a tal renuncia al fin de acomodarse al contrato convenido entre las dos Altas Partes.

Así lo comprendieron los Comisarios españoles. Mas inspirándose en sus vivos deseos de transacción y de paz, se prestaban a que los Estados Unidos quedasen en libertad de transmitir al pueblo cubano la soberanía de la Isla, cuando ellos y solo ellos, considerasen que había llegado la oportunidad de hacerlo.

Proponiéndolo así los Comisarios españoles, renunciaban en obsequio de los Estados Unidos el importantísimo derecho que tiene España para exigirles, cuando la pacificación de la Isla se realice, que no retengan dicha soberanía y la entreguen a aquel pueblo.

La Comisión americana persiste en afirmar que tal es el propósito de los Estados Unidos, pero no quiere que conste en el tratado el notorio derecho de España para exigir su cumplimiento a su debido tiempo.

Mas una vez que los Señores Comisarios americanos se oponen terminantemente a la aceptación del artículo propuesto por entender que no se acomoda al primero del Protocolo, los españoles lo sustituyen con otro que no solamente se acomodara de un modo estricto al recto sentido de aquel artículo primero, sino que apareciera redactado con sus propias palabras pero también con las frases literalmente copiadas de los despachos que precedieron a su redacción y fijaron su sentido.

He aquí la nueva redacción que proponen en sustitución de la anterior:

"Su Majestad Católica la Reina Regente de España, en nombre de su augusto hijo Don Alfonso XIII, Rey de España, constitucionalmente autorizada por las Cortes del Reino, renuncia a su soberanía y a todo derecho sobre Cuba.

"Los Estados Unidos de América, aceptando esta renuncia, reciben de España la Isla de Cuba para prestarle ayuda y dirección y tenerla en su dominio y gobierno hasta que, una vez realizada su pacificación, dejen dicho dominio y gobierno al pueblo cubano."

FUNDAMENTO DE ESTE ARTICULO.

El párrafo 1 es la transcripción del artículo 1 del Protocolo, con las variaciones de cancillería.

El sentido y las frases del párrafo 2 están tomados del ultimatum dirigido por el Gobierno de Washington a España y comunicado en 20 de abril último por aquel Señor Secretario de Estado al Ministro de España en aquella capital. Figuran así mismo en el pensamiento y las frases del Gobierno americano consignados en la contestación del Señor Secretario de Estados en Washington en 31 de julio último al mensaje del Gobierno español proponiendo la terminación de la guerra. He aquí dichas frases: "el Gobierno de los Estados Unidos no ha compartido las aprensiones de España sobre este punto (el de la falta de actual aptitud del pueblo cubano para su independencia) pero piensa que en las condiciones de perturbación y abatimiento en que está la Isla, esta necesita ayuda y dirección que el Gobierno americano se halla disueto a otorgarle."

No hay, pues, en el artículo nuevamente redactado otro pensamiento ni otras frases que las consignadas en el ultimatum de los Estados Unidos a España, en el despacho citado de su Secretario de Estado y en el Protocolo redactado accediendo al ultimatum y de acuerdo con la intención de los Estados Unidos consignada en el despacho sobredicho.

Esto no obstante, ruegan los Comisarios españoles de un modo especial a los Señores Comisarios americanos, que tengan presente que si la legítima exigencia por parte de España para que en el tratado se consigne su derecho para reclamar, a su debido tiempo, a los Estados Unidos de América el cumplimiento del compromiso que espontáneamente contrajeron de dejar la Isla de Cuba libre e independiente, así que este pacificada, no fuese de su agrado, aquellos están dispuestos a renunciar a tal exigencia, dejando a la exclusiva apreciación de los Estados Unidos el resolver cuando hayan de cumplir tal compromiso, al esta renuncia de la Comisión española hu-

quiera de servir para la conclusion del tratado pendiente de paz.

Los Senores Comisarios americanos rechazan tambien los demas articulos del proyecto presentado por los espanoles.

No admiten que de la soberania formen parte las cargas y obligaciones del soberano que procedan exclusivamente del servicio publico de la colonia. Y sin entrar la Comision espanola en la discusion puramente tecnica de si forman parte de la soberania estas obligaciones, o son tan solo efecto del ejercicio de la soberania misma, porque el resultado de esta discusion seria completamente ineficaz para el punto sobre que no convienen unos y otros Comisarios, pasan los espanoles a rectificar brevemente los hechos y los conceptos que se hallan escritos en el Memorandum americano de 14 del corriente. Para demostrar aquellos que las obligaciones coloniales de Espana en Cuba no deben quedar a cargo de esta isla, exponen que tales obligaciones fueron contraidas por la Corona con intervencion de sus funcionarios en la colonia pero sin que esta hubiese intervenido ni prestado su consentimiento para contraerlas. En efecto; el regimen colonial entonces vigente en Espana no daba a sus colonias la facultad de tener Camaras electivas que ejerciesen con el soberano el poder supremo. En los ultimos veinte años ya no sucedia asi. Las Antillas tenian su representacion en ambas Camaras, la cual, por cierto, intervino en todos los actos legislativos sobre obligaciones coloniales, sin que nunca hubiese protestado contra su legitimidad y fuerza obligatoria. Mas, aparte de esto, no se puede negar que mientras aquel regimen subsistia conservando todos los caracteres de la legalidad a la razon establecida, los actos que la soberania colonial ejerciera dentro de las atribuciones que las leyes le conferian, fueron perfectamente legitimos y produjeron lo que no podian menos de producir todas justas consecuencias. Esta en una maxima fundamental en el derecho publico, sin la cual seria imposible el credito de un Estado, porque la validez de todos sus actos estaria siempre a merced de cualquiera causa revolucionaria triunfante. Puede discutirse el acierto de los actos del soberano, pero no cabe discutir su legitimidad y caracter obligatorio, cuando han sido ejecutados en virtud de atribuciones y con las solemnidades reconocidas y establecidas por la ley.

Este principio fue reconocido por el Primer Consul, cuando otorgo con Baviera su tratado de 24 de Agosto de 1801. En su articulo 5 se acordo aplicar lo dispuesto en el tratado de paz de Luneville referente a las deudas hipotecarias de los paises de la orilla izquierda del Rhin. En estos territorios habia Dietas que intervenian el poder del soberano y por esto en dicho Tratado de Luneville se habia exigido que tales deudas hubiesen sido por ellas consentidas. Mas en el Ducado de Deux-Ponts y en la parte del Palatinado del Rhin que adquiria la Francia por el tratado con Baviera, no habia aquella institucion de Gobierno, y por esto convino el Primer Consul en el tratado de 1801 que las deudas de estos paises pesarian con ellos, con tal que hubiesen sido registradas en su origen por sus autoridades administrativas superiores.

Segun la tesis contraria a esta doctrina, si llegara a desaparecer el regimen autocratico de la Rusia actual, el pueblo ruso podria dejar de cumplir todas las obligaciones que sus Emperadores, mientras aquel regimen subsistia, hayan contraido y con traigan para el regimen y gobierno de su Imperio. Los mismos Estados Unidos, que de seguro continuaron observando desde su emancipacion muchos de los preceptos legislativos acordados antes sin su intervencion, por el poder de su Metropolit, tendrian que devolver a la Rusia el Alaska que les vendio el Emperador en 1867 sin haber intervenido en la venta los habitantes de la region vendida; como tendrían que devolver a Espana la Florida, por identica razon, etc.

Si para que sea legitima una deuda es necesario que al crearla intervenga por si mismo el pueblo que la ha de pagar, cuando las leyes no le dan tal intervencion, con mucha mas razon habria de ser necesaria la intervencion de un pueblo cuando su soberano vendiese el territorio que equi habita.

La propia actual cesion de la soberania de las Antillas estaria viciada de nulidad ya que los pueblos cubano y puertorriqueno no fueron consultados ni prestaron hasta ahora su expreso y formal asentimiento al Protocolo de Washington. He ahi las consecuencias de la teoria que bajo el calor de la discusion se halla expuesta en el Memorandum de los Senores Comisarios americanos.

Precisamente el punto que limita mas la libertad de contratacion de los soberanos, en la celebracion de los tratados, es el relativo a las deudas de sus Estados. Sobre la integridad de su territorio y aun sobre su propio honor pueden libre y validamente contratar porque contratan sobre lo que es suyo. Pero carecen de esta libertad cuando sus actos repercuten inmediatamente en los legitimos derechos privados de aquellos particulares que, al amparo de las leyes los habian legitimamente adquirido, sin que despues hayan tenido intervencion alguna en los conflictos que en los tratados se resuelven, ni tengan por lo tanto que indebidamente sufrir sus consecuencias en perjuicio de sus privados y legitimos intereses.

Los acreedores de un Estado, cuando con el contratan tienen siempre muy en cuenta las condiciones de solvencia del Estado a quien prestan su fortuna. Por esto, cuando estas condiciones de soberania decrecen por efecto de cesiones territoriales,

las Atlas Partes entre quienes median estas, así las que hacen la cesion como las que adquieren lo cedido, procuran siempre respetar en su integridad aquellos derechos por medio del reparte de las obligaciones, entre el territorio conservado por el soberano cedente y el territorio adquirido por el Soberano cesionario. Esto es lo que ha venido haciéndose en los tratados de cesion territorial.

Mas cuando los acreedores han adquirido por el propio título de su contrato un derecho directo sobre ciertos y determinados bienes o ciertas y determinadas rentas para reintegrarse con ellos del capital prestado y de sus legítimos intereses, el soberano no puede despues, sin contaro previamente con su asentimiento, ceder ni disponer libremente, como si fueran de su exclusivo dominio, de aquellos bienes y rentas.

Si un soberano se prestara a cometer un atropello semejante de derechos que no son suyos, no por eso aquellos a quienes tales derechos correspondan tendran el deber de resignarse y quedaran privados de reclamar en nombre de los principios sagrados que amparan la propiedad privada, el respecto a lo suyo, contra quien quier que sea en cuyo poder se halle aquello que legítimamente les pertenece.

Y bueno es, con este motivo, hacer formalmente constar, que aun en la hipotesis de que no fuese aceptable el principio que sostiene la Comision espanola y que combate la americana, a saber que la deuda colonial no debe quedar a cargo de la Metropoli, esto nunca podria significar que Espana hubiese de contraer ahora respecto a los tenedores de esa deuda mas obligaciones que las que contrajo al crearla. Y por lo tanto, respecto a aquella parte de la deuda en que no contrajo mas que una obligacion subsidiaria de pago, por haberse consignado en su emision una hipoteca expresa sobre ciertas y determinadas rentas y productos, Espana tendra el derecho de no considerarse nunca obligada por tal contrato, con arreglo a Derecho, a pagar tal deuda, sino cuando despues de haberse destinada a su gabo en primer termino las rentas y productos hipotecados resultaran estos insuficientes, pues hasta entonces no sera exigible, segun las reglas elementales del Derecho, la obligacion subsidiaria que contrajo.

Sin detenerse la Comision espanola hoy sobre las noticias muchas inexactas, que sobre la deuda cubana se leen en el Memorandum americano, se limitara a afirmar que la Isla de Cuba no cubrio, por regla general, desde su descubrimiento, sus propios gastos.

Mientras Espana conservo las colonias americanas, vino la Isla sosteniéndose con los auxilios pecuniarios de sus hermanas, y señaladamente de los del Irreinato de Mejico. En este siglo, durante muy pocos anos tuvo sobrantes, merced al desarrollo de su natural riqueza obtenida al fin con aquellos recursos, y estos sobrantes es cierto que entraron en el Tesoro de la Peninsula. Mas apesar de ellos es lo cierto que en la cuenta general del Estado espanol, de 1896 a 97 aparece el Tesoro de la Peninsula con anticpos a Cuba en los anos anteriores de la epoca moderna, por valor de 429,602,013.08 pesetas, así como aparecen tambien adelantados a Puerto Rico 3,220,488.67 pesetas y a Santo Domingo 1,397,161.69 pesetas.

La prosperidad de Cuba fue de corta duracion, durante la mayor parte del tiempo transcurrido desde los tiempos de Colon, ya por la escasez de sus habitantes, ya por la servidumbre de la raza negra que formaba la mayoria, y ya, en fin, porque los espanoles prefirieran colonizar otras partes de America, no pudo la Isla desarrollar sus riquezas naturales, y, sin embargo, hubo que venir gastando constantemente en ella las grandes sumas que exigia el planteamiento de las reformas y la creacion de los establecimientos que son condicion esencial de la vida moderna.

La Comision espanola no puede menos de protestar contra la afirmacion que en el memorandum americano se hace, de que la insurreccion de los diez anos fue producto de causas justas. Y lamenta que sin una necesidad que lo reclamara de un modo indeclinable tal afirmacion se haya consignado, como la Comision americana, saguramente y con razon lamentaria que la espanola consignase aqui sin necesidad que lo exigiera, la justicia de las rebeliones de los aborigenes del inmenso territorio americano que los Estados Unidos tuvieron que sofocar tantas veces con mano ferrea, y que asimismo consignase el derecho a cuyo amparo los Estados del Sur habian querido romper por las armas el lazo federal.

Es inutil, por lo que luego se dira, que la Comision espanola se ocupe concretamente de los capitulos de la deuda cubana a que se refiere el Memorandum americano. Comprenden los errores que hayan podido cometerse en est documento, porque es muy natural que los Senores Comisarios americanos no conozcan contoda la precision que se requiere para juzgarlos con acierto, los actos de la Administracion espanola, ni en la Peninsula, ni en sus colonias.

Y esto aparece ademas confirmado por los hechos.

Sobre la razon que se cree que hay contra parte de la deuda cubana en la pretendida justicia de la rebelion de una minoria de aquel pueblo reclamando su independencia, solo haremos la observacion siguiente:

La minoria insurrecta, as verdad, se levanto en armas en demanda de la independencia de la Isla. Los Estados Unidos equivocadamente creyeron que su causa era justa y se la impulsaron con las armas a Espana. Mas ahora resulta que Es-

pano tenía razón, porque los propios Estados Unidos reconocen que aquel pueblo no tiene aun las condiciones necesarias para gozar desde luego de su plena libertad y soberanía, y por esta están resueltos a no otorgársela y a retener en ella su dominio, hasta que el pueblo cubano pueda gozar de esa libertad prematuramente reclamada.

La Comisión española está además en el caso de llamar la atención sobre las obligaciones de Puerto Rico. El Memorandum a que contesta, se refiere únicamente a las de Cuba. Es que se cree que a pesar de que la soberanía de la pequeña Antilla no es renunciada, sino cedida por España a los Estados Unidos, debe también pasar libre de toda carga a su poder? Es que se asienta el principio de que las cesiones de territorio, cualquiera que sea la causa que las produzca, aunque esta fuera la conquista, y mucho más siendo esta causa puramente convencional, no llevan ipso facto en sí mismas las cargas que afecten al territorio cedido?

En la discusión oral, los Señores Comisarios americanos indicaron que el Gobierno español había declarado que sobre la pequeña Antilla no existía deuda alguna. Los Comisarios españoles han registrado cuidadosamente todas las negociaciones escritas que mediaron entre las dos Altas Partes, desde el ultimatum del Señor Presidente de la Unión de 20 Abril de este año, hasta la firma del Protocolo en Washington, en 12 de Agosto del mismo. En ninguna de ellas hallaron indicaciones ni vestigios de tal declaración. Y dicho sea de paso, entre otras obligaciones, pesa desde hace muchísimos años sobre la pequeña Antilla, una parte que aunque exigua, no es menos sagrada, de la carga perpetua y verdaderamente de justicia, con que España más que en su nombre en el de América, ha venido demostrando su gratitud al Inmortal Colón que la descubrió y a sus legítimos descendientes, y que la lógica llevaría a los Estados Unidos a repudiar para que continuara pagandola España, si hubieran de prevalecer las conclusiones de la Comisión de aquellos.

Más es el caso que la discusión sobre la deuda llamada de Cuba no parece tener oportunidad en estos momentos.

Los Señores Comisarios americanos al ocuparse de los capítulos principales de tal deuda, creyeron sin duda, que la Comisión española proponía en su proyecto que desde luego fuesen aquellos admitidos como deuda colonial, para pasar con la soberanía a Cuba, o a los Estados Unidos. Y este es el capital error sobre que descansa su Memorandum. Los Comisarios españoles no proponen sino que se consigne en el tratado un principio hasta ahora siempre reconocido, a saber, que con una colonia pasa la deuda que le es peculiar y afecta a su territorio. Contra este principio, nada se dice en el Memorandum americano. Ni espera la Comisión española que se diga a lo menos por los Estados Unidos, cuyo territorio fue por ellos adquirido, no solo con su sangre, sino también con el dinero de sus cajas. Hoy no faltan publicistas que afirmen que por los trece primeros Estados satisficieron a su Metrópoli quince millones de libras esterlinas. Y son hechos oficiales que por la Louisiana, por la Florida, por los Estados Indios, por Texas, por California y por el Alaska se pagaron a Francia, España, India, Rusia y México fuertes sumas. Esta vez sería la primera en que los Estados Unidos, contra sus propias tradiciones, adquirirían gratuitamente territorios que anexar pronto o tarde a la Unión.

El caso de la adquisición de Texas, tan idéntico en su origen, en sus procedimientos y en su término al actual de la Isla de Cuba, prueba de un modo harto elocuente cuán distinta es la política que entonces siguió el Gobierno de Washington con México, de la que ahora quiere seguir con el Gabinete de Madrid. Entonces sus armas empleadas también en apoyo de los insurrectos de Texas, se extendieron por la República mexicana, llegando a apoderarse de la propia capital, lo que no ha sucedido ahora; entonces exigieron de México la independencia de Texas, como ahora de España la de Cuba, y además la sección del Nuevo México y de California como ahora exigen la de Puerto Rico y demás Antillas españolas. Pero entonces pagaron a México sin exigirle indemnización de guerra, el valor de los territorios que se anexionaban, y tomaron además a su cargo la indemnización de los ciudadanos americanos por aquella república perjudicada. Hoy han exigido a España por una indemnización análoga y por gastos de guerra, la cesión de las islas sobredichas, y quieren además que las cargas de estas islas y de su hermana la grande Antilla queden a cargo de la metrópoli, que las introdujo por su mano en el mundo civilizado.

Lo que proponen los Comisarios españoles es únicamente el reconocimiento de este principio, porque su ejecución entienden que debe quedar después a cargo de una Comisión de personas rectas e imparciales. Si esta, reconociendo la cuenta que España presente de las obligaciones que entiende que deben ser a cargo de Cuba y de Puerto Rico, declaran que deben ser a cargo de la Metrópoli, España se conformará. Pero si declaran que todas o algunas deben ser a cargo de la colonia, no hay razón para que los Estados Unidos no presten en tal caso también su asentimiento. Si tan seguros están de su derecho, no pueden rehusar lo que la Comisión española propone, ya que ningún peligro les ofrece. Y si no lo estuvieran, su alta justificación

y el respecto que se tienen a sí mismos, les imponen el deber de subordinar un interés pecuniario a la causa sagrada de la justicia.

Y para demostrar la Comisión española a la americana que el pensamiento sobre dicho es el único que abriga, y que por o tanto no intenta ahora que se reconozca el pago de cantidad alguna determinada como obligación colonial de cualquiera de las Antillas, no tiene reparo en sustituir el artículo 2 que había presentado y en suprimir el 4 y 5 reemplazando los tres por el siguiente.

"Artículo 2.—La renuncia y transferencia que hace Su Majestad Católica y que aceptan los Estados Unidos de América, comprende:

"1. Cuantas prerogativas, atribuciones y derechos correspondan a Su Majestad Católica, como parte de su soberanía sobre la Isla de Cuba y sus habitantes.

"2. Cuantas cargas y obligaciones pecuniarias pendientes al ratificarse este tratado de paz, que previo un minucioso examen de su origen, objeto y condiciones de su creación, deban reputarse, según derecho estricto e innegable equidad, distintas de las que son propias y peculiares del Tesoro de la Península por ser y haber sido siempre propias y peculiares de Cuba.

"Para hacer el riguroso examen que se prescribe en el párrafo anterior, se nombrará por las dos Altas Partes contratantes una Comisión de personas competentes e imparciales según se determinara en el artículo correspondiente de este tratado."

Respecto del 2 párrafo del artículo 3 del proyecto español, a los Señores Comisarios americanos no les parece aceptable la excepción de los bienes patrimoniales del Estado que en el se establecía. Según el Derecho administrativo español, el Estado ejerce las facultades del dominio sobre todos los bienes que la ley española declara de dominio público. Estos claro es que van comprendidos en la cesión de la soberanía. Mas en España el Estado puede también adquirir y conservar como persona jurídica bienes inmuebles por los mismos títulos que el Derecho civil establece para los particulares. Estos eran los que se exceptuaban en la cesión. No obstante lo que se acaba de decir, para demostrar una vez más la Comisión española su deseo de transacción y de paz, renuncia a esta excepción y pasa porque sean también comprendidos dichos bienes patrimoniales del Estado en la cesión y renuncia de su soberanía en las Antillas.

Las demás excepciones consignadas en aquel artículo no puede creer la Comisión española que dejen de ser aceptadas por la americana. Esta en su proyecto hablaba solo de la propiedad individual. Pero no ignoran ciertamente los honorables individuos de la Comisión americana, y hasta sería ofender su grande ilustración el suponerlo, que además del individuo hay otras personas jurídicas en el seno de todas las sociedades civiles, que son capaces, por la ley, de adquirir y conservar la propiedad mueble, e inmueble. Las sociedades mercantiles e industriales, las de Derecho común civil, los establecimientos públicos como los de beneficencia o enseñanza, etc., pueden en España y sus colonias adquirir y conservar la propiedad sobredicha, que está al amparo de las mismas leyes que rigen y protegen la propiedad individual. Pues a la propiedad de estas personas jurídicas, conocida vulgarmente con el nombre de propiedad corporativa, porque no es un individuo sino una corporación el dueño, se refieren todas las excepciones comprendidas en el segundo párrafo del artículo 3 del proyecto español.

En el cuarto párrafo del mismo artículo también han llamado la atención de los Señores Comisarios americanos respecto a la entrega de los Archivos, las frases que tienen por objeto manifestar que los Estados Unidos dispondrán de ellos con los mismos derechos y obligaciones que hasta ahora han estado a disposición del Gobierno español. La explicación de estas frases es muy obvia. El Estado más que dueño absoluto de los Archivos públicos, es su depositario y conservador, así es que no puede destruirlos ni enajenarlos, ni privar a los ciudadanos del uso que necesitan hacer de los documentos en ellos contenidos para la defensa de sus derechos. Puede el Estado destruir el registro civil donde consta el estado civil de cada ciudadano? Puede destruir el registro de la propiedad donde constan los títulos de dominio del patrimonio de cada cual? Ciertamente no; pues eso es lo único que se dice en tales frases. Los Estados Unidos podrán disponer de los Archivos como podría disponer el Gobierno español, pero nada más que este derecho puede este Gobierno transmitirles, porque ningún otro más tiene sobre ellos.

A mayor abundamiento y para que no ofrezca a la Comisión americana duda alguna el sentido del pensamiento de la española, esta sustituye el artículo 3 que tenía presentado con el que presenta ahora, en el que, además de suprimir la excepción de los bienes patrimoniales del Estado, aclara los conceptos que parecieron dudosos a la Comisión americana sobre los Archivos y sus papeles. He aquí su texto:

"ARTICULO 3.

"En cumplimiento de lo convenido en los dos artículos anteriores, Su Majestad Católica, en la representación con que celebra este tratado, renuncia y transfiere a

los Estados Unidos todos los edificios, muelles, cuarteles, fortalezas, establecimientos, vías públicas y demás bienes inmuebles que con arreglo a Derecho son de dominio público, y que como de tal dominio público corresponden a la Corona de España en la Isla de Cuba.

Quedan por lo tanto exceptuados de esta renuncia y transferencia todos los derechos y bienes de cualquiera clase que sea que, hasta la ratificación del presente tratado, hayan venido pacíficamente poseyendo, en concepto de dueños, las Provincias, Municipios, Establecimientos públicos o privados, Corporaciones eclesiásticas o civiles y cualesquiera otras colectividades que tengan legalmente personalidad jurídica para adquirir y poseer bienes en la Isla de Cuba, y los particulares, cualquiera que sea su nacionalidad.

Su Majestad Católica renuncia también y transfiere a los Estados Unidos, a quien se le entregaran por el Gobierno Español, todos los documentos y títulos que se refieran exclusivamente a la soberanía transferida y aceptada, y a todos sus derechos, que existan en los Archivos de la Península. Habiendo de facilitarle copias cuando los Estados Unidos las reclamasen, de la parte correspondiente a dicha soberanía que contengan los demás documentos y títulos que se refieran además a otros asuntos distintos de la Isla de Cuba y de su soberanía y derechos, que existan en los mencionados Archivos. Una regla análoga habrá recíprocamente de observarse a favor de España respecto a los documentos y títulos ajenos en todo o en parte a la Isla de Cuba, que se hallen actualmente en sus Archivos y que interesen al Gobierno español.

Todos los Archivos y registros oficiales, así administrativos como judiciales, que están a disposición del Gobierno de España y de sus autoridades en la Isla de Cuba, y que se refieran a la misma Isla o a sus habitantes y a sus derechos y bienes, quedarán sin reserva de ninguno de esta clase a disposición de los Estados Unidos para que los conserven o dispongan de ellos con las mismas facultades que hasta ahora han tenido sobre los mismos el Gobierno español y sus autoridades.

Los particulares, así españoles como cubanos, tendrán derecho a sacar, con arreglo a las leyes, las copias autorizadas de los contratos, testamentos y demás documentos que forman parte de los protocolos notariales o que se custodien en los Archivos administrativos y judiciales, bien estos se hallen en España o en la Isla de Cuba.

En el artículo 6 del proyecto español no se consignaba la causa de la cesión que hace España a los Estados Unidos de la Isla de Puerto Rico y demás Antillas y de la de Guam en las Marianas. Y sin embargo, esta causa está expresamente consignada en el ya citado despacho del Secretario de Estado en Washington, contestando al Mensaje del Gobierno español. En el después de manifestarse que el Señor Presidente de la República no reclamaba una indemnización pecuniaria por la guerra para dar prueba de una señalada generosidad, se lee el siguiente párrafo: "Sin embargo no puede permanecer insensible a las pérdidas y a los gastos ocasionados por la guerra, ni a las reclamaciones de nuestros conciudadanos con motivo de los daños y perjuicios que han sufrido en sus personas y bienes durante la última insurrección de Cuba.

En consecuencia está obligado a pedir la cesión a los Estados Unidos y la evacuación inmediata por España de Puerto Rico y de las demás Islas que se hallan actualmente bajo la soberanía de España en las Indias occidentales, así como la cesión en las Ladroneas de una Isla designada por los Estados Unidos."

Estos designaron la Isla de Guam.

Los Comisarios españoles sustituyen el artículo 6 de su anterior proyecto con el que ahora presentan, haciendo constar la causa de la cesión. La Comisión americana es bien seguro que en este punto estará conforme con la española para que en el tratado no aparezcan los Estados Unidos adquiriendo gratuitamente aquellas Islas.

He aquí el artículo:

ARTÍCULO 4.

"En compensación de las pérdidas y gastos ocasionados a los Estados Unidos por la guerra, y a las reclamaciones de sus conciudadanos con motivo de los daños y perjuicios que hubiesen sufrido en sus personas y bienes durante la última insurrección de Cuba, Su Majestad Católica, en nombre y representación de España, y constitucionalmente autorizada por las Cortes del Reino, cede a los Estados Unidos de América y estos aceptan para sí mismos, la Isla de Puerto Rico y las otras Islas que actualmente están bajo la soberanía española en las Indias occidentales, así como la Isla de Guam en el Archipiélago de las Marianas o Ladroneas, que fue elegida por los Estados Unidos de América en virtud de lo convenido en el artículo 2 del Protocolo firmado en Washington el 12 de Agosto último."

Respecto al artículo 7 del proyecto, la Comisión española entiende por cuanto va dicho en este Memorandum, que debe sostenerlo sin otra variante que la indispensable para ponerlo en relación con los nuevos artículos que se presentan.

Quedará pues redactado en la forma siguiente:

"ARTICULO 5.

"Esta cesion de la soberania sobre el territorio y habitantes de Puerto Rico y las demas islas mencionadas se entiende que consiste en la cesion de los derechos y obligaciones, bienes y documentos relativos a la soberania de dichas islas, iguales a los que respecto a la renuncia y transferencia de la soberania de la Isla de Cuba, se definen en los articulos anteriores."

En resumen de todo, resulta que la unica cuestion que hasta ahora existe y aguarda una resolucion de ambas Comisiones esta reducida a una cuestion pecuniaria, de importancia relativamente secundaria para una de las Altas Partes contratantes, la de la deuda colonial.

Y entienden los Comisarios espanoles que no es posible que una cuestion de esta indole pueda dejar de tener una solucion satisfactoria, ya que media entre partes, la una el mas grande Estado del Nuevo Mundo, inmensamente rico y prospero, con inagotables recursos con que le dota la naturaleza y la prodigiosa actividad de sus habitantes, y el cual adquiere ademas por este tratado territorios de grande importancia, realizando asi una aspiracion de su politica en America, y la otra una grande y noble nacion del antiguo, cordial amiga de aquel en dias para ella mas prosperos, pero empobrecida hoy por las desgracias que sobre ella ha acumulado el siglo que termina, con un Tesoro cargado de obligaciones y a la cual este tratado le reserva la confirmacion solemne de la perdida de los ultimos restos del Imperio americano, cuyo descubrimiento hizo posible la existencia de aquella gran Republica y que ademas con el tanto enriquecio al mundo moderno, a costa quizas de su propio bienestar y del desarrollo que tenia derecho a esperar de sus grandes elementos de riqueza acumulados y no explotados en su seno, por dedicar preferente su atencion a colonias, que como otros seres en el orden de la naturaleza a quienes su madre dedica sus desvelos, ha criado y sostenido a costa de su propio bienestar.

Esta conforme: EMILIO DE OJEDA.

TRANSLATION.

(Annex to Protocol No. 9.)

MEMORANDUM.

It is with deep regret that the Spanish Commissioners have thoroughly acquainted themselves with the memorandum presented by the American Commissioners at the last session, held on the 17th instant. In this document the said gentlemen, relying upon assertions and views to the accuracy of which the Spanish Commission cannot subscribe, despite the upright intention with which it doubts not they were expressed, and by saying that they substitute for the draft of the two articles relating to Cuba and the other Islands, which they presented at the session of the 3rd instant, two other articles which are limited to literally copying the two first articles of the Protocol of Washington, alleging in this behalf that they understand that the treaty of peace, so far as it refers to the sovereignty of the West Indies and the Island of Guam, in the Marianas, should contain neither more nor less than a literal reproduction of those two articles.

But as these already form a part of a binding agreement, which the Protocol of Washington is, it seems useless merely to reproduce them in the treaty which is to be elaborated in the conference. Contracts, private as well as international, are perfect and produce all their effects for the parties executing them without the necessity of any subsequent confirmation, which can in nowise increase their efficacy. Therefore, this reproduction, if the treaty of peace relating to the West Indies is to be thus limited, as the American Commissioners desire, seems to be redundant.

If this consideration is pure reason, or even mere common sense, the proposal of the American Commissioners can only be comprehended on the supposition that the latter understand that the treaty, apart from any provision of a secondary character that may be included therein, should relate only to the Philippine Archipelago.

If such is the thought of the American Commission, the Spanish Commission cannot assent thereto, because it understands that its execution would be an infraction of the Protocol.

After the three conditions which the Secretary of State at Washington, replying on July 30 last to the message of the Government of Her Catholic Majesty of the 22nd of the said month, proposed to Spain for the termination of the war, he said: "If the terms hereby offered are accepted in their entirety commissioners will be named by the United States to meet similarly authorized commissioners on the part of Spain for the purpose of settling the details of the treaty of peace and signing and delivering it under the terms above indicated." These details do not appear to be circumscribed to the archipelago.

The very President of the American Republic, in the conference he held on August 10 with the Ambassador of France, representing Spain for the time being, made an absolute distinction between the Protocol and the treaty of peace, stating that the former should only be a mere preliminary document which should have no object or effect other than to record without any delay the agreement of the two Governments upon the principles themselves of the peace, and that, therefore, it would not be necessary to reserve therein either the rights of the Cortes or those of the Federal Senate, who were charged only with the ratification of the final treaty.

The President, it is true, spoke of the Philippine question to state that it was reserved for the Paris conference; but he never said, or even intimated, that this subject should be the only one to be treated by this conference.

And, finally, in Article V of the Protocol, framed in harmony with all these antecedents, it is said that the Commissioners named by both High Parties were to proceed to Paris to negotiate and conclude a treaty of peace, without limiting or restricting their object, and, on the contrary, employing a phrase the evident meaning of which is that the treaty of peace to be elaborated by the Commission should settle all questions at the time pending between the two states which were not already settled in the preliminary agreement of the Protocol.

It is true that the American Commissioners base their last draft on the ground that everything relating to the Spanish Antilles is already settled in the Protocol. But this argument is precisely the one to which the Spanish Commissioners from the very first conference have not been able and are now unable to assent.

The Americans in their memorandum of the 11th of this month stated that the Spanish Commissioners placed conditions to the relinquishment of sovereignty over Cuba in their proposal. A very serious error. In that proposal the absolute and unconditional character of such relinquishment is not disregarded; all that is done therein is to lay down what this relinquishment consists of. And this is essentially different from what the American Commissioners understand.

And that, in fact, the articles of the draft of the Spaniards have for sole object the establishing of the meaning of the relinquishment, but not to subject it to conditions, is demonstrated by the very object of the oral and written discussions which have been taking place between the two sides.

The American Commissioners understand that the only meaning which can be given to the relinquishment of the sovereignty agreed upon in the Protocol is that of the abandonment of this sovereignty, to deduce therefrom that Spain should abandon the Island of Cuba just as any power may abandon a desert territory in Africa which it might formerly have possessed.

Although the Spanish Commission distinguishes between the legal meaning of the word "abandonment" and that of the word "relinquishment," it would not engage in this technical discussion (improper in a diplomatic conference) were it not for the fact that the American Commission urges its opinion as the principal ground for its claim that through such supposed abandonment all legal bond is severed and no new one grows out of the act, as between Spain and the United States, upon the latter taking possession of the island either in their own name and for themselves or in the name of and for the Cuban people.

But this claim, unexampled in the diplomatic annals of the world, cannot be admitted by the Spanish Commissioners, who make a part hereof of all that they set forth in the first section of the memorandum they presented in reply to the draft of articles of the American Commission, and they add the following brief observations which are suggested to them by the two memoranda lately presented by the latter Commission:

The Spanish Commission passes over the citation made in support of its opinion by the American Commission from the *Diccionario de Escribiche*, which is certainly a very respectable work, but whose only object is the exposition of the practical principles of private municipal law, a very popular exposition in Spain, it is true, as it serves as a mentor for young lawyers in the early period of their professional life, but which is absolutely foreign to the science of international and public law.

Cases of abandonment in the sense claimed are not recorded in the modern history of peoples save those of desert territories, or at best, populated by the barbarous tribes of Africa. An abandonment of a true state already formed, existing for centuries, with a complete social and political organization and peopled

with inhabitants who enjoy and have the right to enjoy all the benefits of modern civilization, has never been known up to the present time, and the Spanish Commissioners do not believe there is such a case in the world. Abandoned territories are legitimately occupied by the state desiring to establish its sovereignty therein. But this merely de facto occupation does not impose upon the occupant duties other than those performed in the regions of Africa by the European powers with regard to barbarous tribes peopling or overrunning them. Does the American Commission believe that the United States, as occupants of the Island of Cuba (since this is the only condition upon which, according to the view they defend, they are to take possession of it) are to have no duties with respect to the inhabitants of the Great Antillean Isle other than those performed with regard to those degraded human beings?

We are fully satisfied that such is not the thought of the American Commissioners, but their insistence in denying all difference in law between the effects of abandonment and the effects of relinquishment inevitably leads to this conclusion.

And this, notwithstanding the assertion of the American Commissioners in their last memorandum to the effect that the United States will afford the inhabitants of Cuba and their property all the protection they may need, as they have been doing in the small portion of territory of the island occupied by force of arms. Do the United States believe that they ought not to recognize more rights in Spain upon her relinquishing her sovereignty over the Island of Cuba and its inhabitants than they or any other power would hasten to recognize in the most unfortunate of the African tribes whose territory they are taking? But aside from the fact that they themselves do not attribute to this obligation, which they say they have, more than the right to be possessors of the island, it is also true that the said Commissioners do not lend themselves to this or any other obligation of the United States being recorded in the treaty, which, as they demand, must be limited to the reproduction of the two first articles of the Protocol. Therefore, this obligation, which in the memorandum they say they contract, will not be enforceable, as it is not in the treaty; and without any intention to offend the United States, logic absolutely precludes the denial of the possibility of there happening, more or less, in this connection that which happened with respect to the obligations which the United States spontaneously contracted in the negotiations leading up to the Protocol, and which, notwithstanding this, the American Commissioners decline to have appear in the treaty.

The Congress of the United States, in its joint resolution, and the President of the Union, in his ultimatum to Spain, could have demanded of the latter nation (although it is useless to state that Spain would not have acceded to so harsh a demand) the absolute abandonment of her sovereignty over Cuba in the sense in which it is now demanded by the American Commissioners, as he could have also demanded its full cession to the United States free of all burdens. But the truth is that he did not demand it because he limited himself to claiming the relinquishment of the sovereignty in order that the Cuban people might become free and independent, or, what is the same thing, the relinquishment of the sovereignty in favor of the Cuban people, that they might become free and independent, although at the same time he demanded that this relinquishment should be at the outset made in favor of the United States for that people to whom the United States were to give aid and guidance, as it was not otherwise possible for the Island of Cuba to pass directly and immediately from the possession of Spain to that of the Cuban people, as it was to remain in the control of the United States until the pacification of the island. It seems to us that the American Commissioners cannot fail to recognize this as strictly correct.

And if such were the terms in which the United States expressed their demand, to which Spain finally acceded without the former having previously modified them, it is as clear as the light of day that the agreement which is formulated in Article I of the Protocol (for no other was concluded between the two High Parties) must necessarily be taken in the sense of the terms in which it was proposed by one of the parties and accepted by the other, and that it is not lawful for either of the parties now to alter those terms for the purpose of converting that relinquishment, demanded for a determinate purpose and following a procedure agreed upon, into an absolute abandonment, without the object and procedure stipulated, as the American Commission now contends should be done.

Therefore, what is to be set forth in the treaty is not the abandonment which the American Commission demands, but rather the relinquishment agreed upon, which the Spanish Commission upholds. The case is analogous to many others which colonial powers have had to meet when they lost their sovereignty over all or a part of their colonies. Never did a colonial power abandon, in the sense it is now sought to urge, a colony that it might be converted into a new state, free and independent. When such a case arose the mother country ceded or relinquished her sovereignty if the colony had not conquered it previously by force of arms, but

she never abandoned it in the sense referred to. If the American Commissioners are not in accord with this categorical assertion, we beg them to cite one case that will contradict it.

The Spanish Commissioners also beg the American Commissioners to direct their calm and enlightened attention to the flagrant contradiction which stands out between their theory and the acts which the United States have been carrying into effect. According to the American Commission the only legal situation possible over the Island of Cuba between Spain on the one part and the United States for themselves or in the name of the Cuban people on the other is the following: Spain must abandon the Island of Cuba. The United States after the abandonment are to take possession of the Island for the Cuban people. And consequently the transit of the Island from one situation to another must be made without establishing any legal bond between Spain and her former colonies and, for the latter, the United States. Very well; the forces of the United States conquered Santiago de Cuba and signed a capitulation with the Spanish military authorities. In this they did not demand that the forces of the mother country should abandon Santiago de Cuba, but that it should be delivered to the American authorities, an inventory being made which was signed by both parties, in which is recorded how much the one delivered and the other received. The American Commission which is in Havana, having been appointed pursuant to the provisions of Article IV. of the Protocol, demands that the Spanish Commission deliver over to it all that belongs to Spain in the exercise of her sovereignty, as well in the civil branch as in the military; and this pursuant to the express instructions of its Government; and it is unnecessary to state that this delivery must also be made with an inventory.

In view of these facts is it possible to deny to Spain, upon relinquishing her sovereignty over Cuba, the right to demand that the United States have it delivered to themselves?

But there is more than this: The American Commission, in spite of the theory it is urging, has accommodated its first steps to the theory urged by the Spanish Commission. In the second paragraph of Article I, which the former Commission presented on October 3, it calls the relinquishment of the sovereignty of Spain in Cuba a cession, not an abandonment. And this cannot be explained as a simple inaccuracy in language, because in Article II it establishes what are to be the effects of the cession of the sovereignty of Porto Rico, and employs in establishing these effects the same, exactly the same, phrases which it had just employed in Article I to establish the effects of the relinquishment of the sovereignty in Cuba. A complete proof that the American Commission, notwithstanding the opinion it sustained in the heat of the debate with the Spanish Commission on framing its first draft, understood that the effects of the relinquishment of sovereignty were the same, exactly the same, as those of a cession.

And if it is argued that, although the effects are the same, the relinquishment, which the American Commission called abandonment, is distinguished from the cession in that the former is not made to any one who is to acquire the abandoned territory, whereas, on the contrary, cession is made in favor of some one who is to acquire ceded territory, the American Commissioners also failed to mark this difference in their draft, for, speaking in both articles of the archives and other papers which were to be the object of the relinquishment or cession, they say the same thing in both, employing the same phrases, that every certified copy of said document that might be requested by an officer of the Spanish Government should be issued to him at all times, and this is unintelligible save in the sense that there must be some one to issue such copy. And it will be impossible to issue it save by the one having in his possession the document to be copied. And he who has not received it cannot have it in his possession. Consequently, when the American Commissioners established in Article I the rules relating to the delivery of the archives of the Island of Cuba, they acted on the supposition that such delivery had to be made to some one. And this, and nothing more than this, is what they set down in Article II relating to the delivery of the archives of the Island of Porto Rico.

The American Commission, in order to sustain its inadmissible opinion regarding the abandonment by Spain of the Island of Cuba, relies on the difference which appears in the Protocol itself. They say that Spain agreed to cede only Porto Rico to the United States, while she bound herself to relinquish the Island of Cuba. From this they deduce that the effects of the obligation of Spain with respect to one are broader than with respect to the other. We have already proved by the very text of the draft of articles presented by the said gentlemen that when they drew it up they did not even perceive this difference in the effects with respect to Spain. The difference, nevertheless, is well understood under another aspect. The United States made a demand on Spain and afterwards declared war on her that Cuba might become free and independent. And it is clear that, having conquered, they could not demand that the Island be ceded to them, ignor-

ing the liberty and independence thereof, as this would give cause to the world to believe that such liberty and independence had not been the true cause of the conflict. They did not make the same demand regarding Porto Rico, and did subsequently claim the sovereignty of the latter island and of the others surrounding Cuba (which will render impossible its independence without the will and gracious consent of the United States, which will always have it at their mercy, owing to their control over the islands surrounding it like a band of iron) in the way of indemnity for the expenses of the war and of the damages which they said American citizens had suffered during the colonial insurrection. This is the natural explanation of why in the Protocol the sovereignty of one island appears as relinquished and that of the others as ceded.

The Spanish Commissioners understand from all the foregoing that it is their non-avoidable duty to continue to maintain that the relinquishment of the sovereignty in Cuba to which Spain bound herself in the article of the Protocol must be understood not as an abandonment of sovereignty in the sense given to the phrase by the American Commissioners, but in that of a relinquishment, properly speaking, as expressed in the copy written in French, which the American Government also signed, and which for this reason it cannot do less than accept as an official text. Consequently, Spain is bound to relinquish the total sovereignty over Cuba, so that another obligation may bind the United States, which is that of receiving the island in the name of and for the Cuban people, for whom, aside from the high humanitarian motives which, as they assert, inspired their action (although Spain cannot assent to this) they freely and of their own motion constituted themselves agents, with all the obligations imposed on the "negotiorum gestor" (although they persist in affirming that they are not such "in rem suam"), as the law designates him who charges himself with managing and defending the interests of another, although the latter may not have conferred upon him express and official power.

The Spanish Commissioners therefore believe that the counterdraft of the first article which they presented is framed in the strict sense of Article I of the Protocol, save in one important point which the Spanish Commissioners proceed to take up.

The United States of America demands of Spain, as has been said, the relinquishment of the sovereignty over Cuba in the terms set forth in this memorandum.

The American Commission in its last memorandum but one says that, if Spain had acceded as required in the ultimatum to the abandonment of the island of Cuba without delivering it to the United States, everybody would have thought that Spain had done all that could be required of her. Everybody perhaps would have thought so except the United States, because it does not seem to the Spanish Commission that it is under the necessity of showing that there is no one either in Europe or America who believes that the United States would have been satisfied with Spain withdrawing from the island of Cuba, they abstaining from all intervention in the Greater Antille, so that the people inhabiting it should continue fighting among themselves, and, in the exercise of their natural right, making of themselves and their destinies the use or the abuse which, in view of their independence, they could make with or without reference to the will of the United States.

It is the undeniable and immediate result of these terms that the United States must receive the island of Cuba, not to retain it for all time nor even indefinitely as their own, but to exercise their sovereignty until the island is pacified and to turn it over to the people inhabiting it as soon as the pacification thereof shall be realized.

This, then, must, if the agreement which has intervened between the two High Contracting Parties is to be complied with, be recorded in the first article of the treaty relative to such relinquishment.

Such was the understanding of the Spanish Commissioners. But, animated by their keen desire for composition and peace, they consented that the United States should remain at liberty to pass the sovereignty of the island over to the Cuban people, when the former, and they alone, should consider that the proper time for doing so had come.

By this proposition the Spanish Commissioners gave up, in deference to the United States, the most important right held by Spain, to demand, when the pacification of the island shall be effected, that they do not retain this said sovereignty, and that they pass it over to that people.

The American Commission persists in affirming that such is the intent of the United States, but does not want the notorious right of Spain to demand that it be carried out in due time to be of record in the treaty.

But since the American Commissioners are decidedly opposed to accepting the proposed article because of their construction that it is not in accord with the first article of the Protocol, the Spanish Commissioners substitute for it another, which will not only strictly agree with the correct meaning of that first article, but will

be seen to be worded not only in its very terms but also in the sentences literally copied from the notes which preceded its drafting and determined its import.

Here is the new phraseology which is proposed in substitution for the previous one:

"Her Catholic Majesty, the Queen Regent of Spain, in the name of her August son, Don Alfonso XIII, King of Spain, thereunto constitutionally authorized by the Cortes of the Kingdom, relinquishes her sovereignty over and title to Cuba.

"The United States of America, accepting said relinquishment, receive the Island of Cuba from Spain to lend it aid and guidance and hold it under their control and government until the pacification thereof realized, they leave said control and government to the Cuban people."

Basis of This Article.

Paragraph one is the transcript of Article 1 of the Protocol with the changes of diplomatic form.

The import and phraseology of paragraph two are taken from the ultimatum addressed to Spain by the Government of Washington and communicated on the 20th of April last by the Secretary of State to the Minister of Spain at Washington. There also appear therein the views and the sentences of the American Government set forth in the reply of the Secretary of State of Washington of the 31st of July last to the message of the Spanish Government proposing to terminate the war. Here are the said sentences:

"The Government of the United States has not shared the apprehensions of Spain (that of the lack of present aptitude of the Cuban people for independence) but thinks that in the perturbed and prostrate conditions of the Island the said Island needs aid and guidance, which the American Government is prepared to grant to it."

There is, therefore, in the new drafting of the article, no other import nor other phrases than those set forth in the ultimatum of the United States to Spain in the aforementioned note of their Secretary of State and in the Protocol worded in compliance with the ultimatum and in accordance with the intent of the United States, as set forth in the aforesaid note.

Notwithstanding that, the Spanish Commissioners especially request the American Commissioners to bear in mind that, if the legitimate demands on the part of Spain that the treaty mention her right to ask in due time of the United States of America the fulfilment of the engagement spontaneously undertaken by them, to leave the Island of Cuba free and independent whenever peace is restored, be distasteful to them, the former are ready to forego this demand, leaving it exclusively to the determination of the United States to decide at what time this engagement should be fulfilled, if the conclusion of the pending treaty of peace can be subserved by such renunciation by the Spanish Commissioners.

The American Commissioners also reject the other articles of the draft submitted by the Spaniards.

They do not admit that the charges and obligations of the sovereign which proceed exclusively from the public service of the colony are part of the sovereignty. The Spanish Commission, without entering upon a purely technical discussion of the question as to whether such obligations form part of the sovereignty or are merely an effect of the exercise of the sovereignty itself, for the result of such a discussion would be absolutely without effect upon the point on which the Commissioners on both parts do not agree, will simply proceed briefly to set right the facts and the opinions which are set forth in the American memorandum of the 14th instant. In order to demonstrate that the colonial obligations of Spain in Cuba must not remain a charge upon that Island, the American Commissioners state that these obligations were contracted by the Crown through the medium of its officials in the colony, but without any intervention or consent towards such obligations on the part of the colony.

It is true, the colonial system then prevailing in Spain did not confer upon its colonies the right of having elected Chambers which would administer the supreme powers in conjunction with the sovereign. In the last twenty years, however, it was not thus. The Antilles had representatives in both Chambers who surely intervened in all the legislative acts bearing upon colonial obligations without ever protesting against their lawfulness or binding force. Moreover, besides this, it cannot be denied that so long as this system prevailed, maintaining all the characteristics of legality established at the time, the acts which the colonial sovereignty performed within the powers with which it was invested by law, were perfectly lawful, and carried, as they could not fail to do, all their rightful consequences. It is a fundamental maxim of public law, without which the credit of a state could not exist, because the validity of all its acts would always be at the mercy of any triumphant revolutionary movement whatsoever. The wisdom of

the acts of the sovereign may be discussed, but when they have been executed by virtue of his attributes and in the solemn form recognized and established by law, their lawfulness and binding character are not a matter for discussion.

This principle was recognized by the First Consul when he concluded his first treaty of August 24, 1801, with Bavaria. In its fifth article he agreed to apply the provision of the Lunéville treaty of peace with regard to the mortgage debts of the country on the left bank of the Rhine. In those territories there were Diets which participated in the power of the sovereign, and for this reason the said treaty of Lunéville demanded that such debts should have been agreed to by them. But in the Duchy of Deux-Ponts and in that part of the Palatinate of the Rhine which France acquired by the treaty with Bavaria there was no such a governmental institution, and, therefore, the First Consul agreed in the treaty of 1801 that the debts should follow the countries, provided they had been registered at their origin by the supreme administrative authority.

If the position opposed to this doctrine were maintained, the Russian people might be exempted from meeting all the obligations that may have been or may be contracted by its Emperors while this system should obtain, for the administration and government of their Empire, in the event of the abolition of the autocratic system now prevailing in Russia. The United States themselves, who as a matter of fact continued to observe after their emancipation many of the provisions of law enacted previously without their intervention by the power of the mother country, would have to return to Russia Alaska, which the Emperor sold to them in 1867 without the intervention in such sale of the inhabitants of the country thus sold; likewise they should return to Spain Florida, for the same reason, etc.

If in order that a debt be lawful it be necessary that the people which has to pay the same should intervene when it is incurred, when the law does not confer such intervention, how much more necessary must the intervention of a people be when its sovereign sells the territory which it inhabits.

The very act of cession of sovereignty over the Antilles would be tainted with nullity, since the Cuban and Porto Rican peoples have not been consulted and have not expressed their formal assent to the Protocol of Washington. Such are the consequences of a theory which in the heat of discussion has been advanced in the memorandum of the American Commissioners.

The very point which most limits the freedom of action of sovereigns in the conclusion of their treaties is that relative to the debts of their states. As to the integrity of their territory and even as to their own honor they may bind themselves freely and validly because they dispose of what is their own. But this liberty is curtailed when their acts immediately reflect on the lawful rights of those private parties who lawfully acquired said rights under the protection of the laws and have thereafter had no part whatsoever in the conflicts which are solved by treaties, and should consequently not suffer unduly from the consequences of such treaties to the prejudice of their private and legitimate interests.

When the creditors of a state make a contract with the same, they always take into earnest account the conditions of solvency of the state to which they lend their property. Hence, when these conditions of solvency are impaired in consequence of territorial cessions, the High Contracting Parties between whom these cessions are effected, that which makes the cession as well as that which acquires the ceded territory, always endeavor wholly to respect such rights by means of a partition of the obligation between the territory kept by the ceding sovereign and the territory acquired by the sovereign to whom it is ceded. This is what has been done in the treaties of territorial cession.

But when the creditors have been granted by the very certificate of their contract a direct lien on certain defined property or certain defined income, in order thus to recover the loaned capital and its legitimate interest, the sovereign cannot then, without first reckoning with their consent, cede or freely dispose of such property and incomes as if they were his full and exclusive property.

If a sovereign should consent thus to trample upon rights which are not his own, those to whom such rights appertain would not be bound to submit and remain without appeal, in the name of the sacred principles which protect private property, to the respect of what belongs to him, whoever he may be who has in his power that which lawfully belongs to him.

And it were well in this connection formally to record that even granting that the principle sustained by the Spanish and contested by the American Commission, to wit, that the colonial debt should not be chargeable to the mother country, is inadmissible, this could never mean that Spain should now assume, with respect to the holders of that debt, more obligations than she contracted upon creating it. And, therefore, with respect to that part of the debt where she contracted only a subsidiary obligation to pay (since at issue it was expressly secured by certain and determinate revenues and receipts), Spain will have the right, under the law, to

consider that she is not bound to pay such debt save in the event of the revenues and receipts primarily hypothecated to the payment thereof proving insufficient, for not until then, according to the elementary rules of law, will the subsidiary obligation she contracted be enforceable.

Without expatiating to-day on the information, very incorrect, which is set forth in the American memorandum concerning the Cuban debt, the Spanish Commission would confine itself to asserting that as a general rule the Island of Cuba has not since its discovery covered its own expenses.

As long as Spain kept the American colonies the Island was sustained by the pecuniary aid of her sisters and specially by that of the Vice-Royalty of Mexico. In this century, for a very few years, she had a surplus, thanks to the development of her natural resources, at last obtained through this assistance, and it is true that this surplus was turned over to the treasury of the Peninsula. But with this exception it is patent that the general accounts of the Spanish state from 1896-1897 show that the treasury of the Peninsula advanced to Cuba, in the years preceding that recent period, a sum amounting to 429,602,013.08 pesetas. There also appears an advance to Porto Rico of 3,220,488.67 pesetas, and to Santo Domingo 1,397,161.69 pesetas.

The prosperity of Cuba was of short duration; for the greater part of the time from the days of Columbus, by reason either of the scarcity of its inhabitants or of the slavery of the black race which formed the majority, or lastly because Spaniards preferred to colonize other parts of America, the Island was unable to develop its natural resources; and it was nevertheless constantly necessary to expend in the Island the large sums which were required for the establishment of reform and the creation of the institutions which are the essential conditions of modern life.

The Spanish Commission cannot but protest against the assertion made in the American memorandum that the ten years insurrection was the outcome of just grievances, and it regrets that such an assertion should have been made without a necessity which would have required it unavoidably, in the same way as the American Commission would surely, and with good reason, regret that the Spanish Commission should say anything here without an imperative necessity of the justice of the rebellions of the natives of the immense American territory which the United States had so often to suppress with an iron hand, and if it should also say anything of the right by which the Southern States attempted to break the federal bond by the force of arms.

It is useless, for reasons that will hereinafter be stated, for the Spanish Commissioners to take up the concrete discussion of the divisions of the Cuban debt to which reference is made in the American memorandum. They understand the errors that may have found their way into that document, because it is very natural that the American Commissioners should not have such accurate knowledge as is requisite for precise judgment of the acts of the Spanish administration in the Peninsula or in its colonies.

And we find a confirmation of this in the facts.

In regard to the argument against the recognition of a certain part of the Cuban debt, on the ground that the rebellion of a minority of the Cuban people to obtain their independence was just, we have only to make the following remark:

The insurgent minority, it is true, rose up in arms to secure the independence of the island. The United States erroneously believed that their cause was just, and by force of arms caused it to prevail against Spain. But now the facts have shown that Spain was right, as the United States themselves have had to recognize that the Cuban people are not as yet in such conditions as are necessary to entitle them to the enjoyment of full liberty and sovereignty. It is upon this ground that the United States have decided to withhold from that people the said privileges and to hold them under American control until they become able to enjoy that liberty prematurely demanded by them.

The Spanish Commission feels bound, furthermore, to call the attention of the American Commission to the obligations of Porto Rico.

The American "memorandum" which is now answered refers exclusively to the obligations of Cuba. Is this omission due to the belief that as the sovereignty over Porto Rico was not relinquished but ceded by Spain to the United States, it must be conveyed to the latter free from burdens of all kinds? Is the principal maintained that cessions of territory, for whatever causes, whether conquest, or a mere agreement, do not carry with them *ipso facto* all the burdens which encumber the ceded territory?

In the oral discussion the American Commissioners stated that the Spanish Government had declared that no debt rested on the smaller Antille. The Spanish Commissioners have carefully gone over all the written communications that have passed between the two High Parties, from the ultimatum of the President of the Union of April 20 of this year to the signing of the Protocol in Washington on August 12 of the same. In none of them have they found a suggestion or trace of such a declaration. And, be it said in passing, that among other obligations, the

smaller Antille has been burdened for very many years with a part, which though small is no less sacred, of the perpetual and truly just charge through which Spain, in the name of America rather than her own, has been showing her gratitude to the immortal Columbus, who discovered it, and his legitimate descendants, and, should the conclusions of the American Commissioners prevail and Spain continue paying it, logic would place the United States in the position of repudiating it.

But the fact is that the discussion upon the so-called Cuban debt seems to lack opportunity at the present.

The American Commissioners, when referring to the principal items of the said debt, doubtless believed that the Spanish Commission had suggested in its draft the said items to be at once admitted as colonial debt to be transferred together with the sovereignty either to Cuba or to the United States; and this is the capital error upon which the American memorandum is based. The Spanish Commissioners only wish that the principle, up to this time always admitted, to wit: that a debt being exclusively the debt of a colony and affecting its territory, goes with the colony itself, be also recognized in this treaty. The American memorandum says nothing in contradiction of this principle, nor do the Spanish Commissioners expect that anything be now said against it, least of all by the United States, whose territory was acquired by them not only with their blood but also with the money of their treasury. There are publicists who maintain that the thirteen original States paid over to their mother country fifteen million pounds sterling (£15,000,000); and the facts are official that the United States paid to France, Spain, the Indian nations and Russia respectively considerable sums of money for Louisiana, Florida, the Indian States, Texas, California and Alaska. This instance would be the first one in the history of the United States, in which they, acting at variance with their own traditions, should have gratuitously acquired a territory which sooner or later will be annexed to the Union.

The case of the acquisition of Texas, identical as to its origin, its process and its end with that of the Island of Cuba, eloquently shows that the policy then pursued with Mexico by the United States is different from the one now pursued with Spain. In the case of Mexico the American armies, also in support of insurgents, the Texan insurgents, spread themselves over the territory of the whole Mexican Republic, and went as far (a fact which has not taken place in Cuba) as to capture the national capital. The United States demanded then from Mexico the independence of Texas as they now demand from Spain the independence of Cuba, and furthermore they caused Mexico to cede to them New Mexico and California, as now they cause Spain to cede to them Porto Rico and the other Spanish Islands in the West Indies. But in the case of Mexico they did not ask from her Government any war indemnity, and consented not only to pay her the value of the territories ceded and annexed to the American Empire, but also to assume the payment of the American claims then standing against Mexico.

In the case of Spain, however, they have demanded from her, in the way of war indemnity, the cession of the islands above mentioned, and ask now, additionally, that the burdens which encumber those islands as well as their sister Cuba be thrown on the mother country, who with her own hands introduced them into the life of the civilized world.

The only wish of the Spanish Commissioners is that the principle above referred to be admitted and recognized. Its practical application may, according to their understanding of the subject, be afterwards entrusted to a Commission of righteous and impartial persons. If this Commission upon examination of the bill of items to be filed by Spain, showing what obligations ought in her opinion to be paid by either Cuba or Porto Rico should decide that those obligations must fall on the mother country, Spain shall submit to its decision. But if the Commission decides that the whole or a part of the said debts ought to be paid by the colony, there is no reason why the United States in their turn should not also submit to the award. If the United States feel so sure, as they seem, in their position, they cannot see any danger in assenting to the proposition herein made by the Spanish Commission. But if they are not so sure, their high sense of justice and the duty of respect which they owe to themselves impose upon them the obligation of causing a matter of mere pecuniary interest to be made subordinate to the sacred cause of justice.

And in order to show to the American Commission that the Spanish Commissioners have no other wish than the one stated, and that their purpose is not by any means to have a fixed sum adjudged at this time, as a colonial debt to be paid by the Spanish Antilles, they have decided to withdraw Articles II, IV and V, as drawn up by them in their former draft, and offer as a substitute for the three, a single article reading as follows:

"ARTICLE II.

"The relinquishment and transfer made by Her Catholic Majesty and accepted by the United States of America embrace:

"1. All the prerogatives, powers and rights belonging to her Catholic Majesty as a part of her sovereignty over the Island of Cuba and its inhabitants.

"2. All the charges and pecuniary obligations, outstanding at the date of the ratification of this treaty, which upon careful examination of their origin, their purposes and the conditions of their creation, should be adjudged according to strict law and undeniable equity to be different from the charges and obligations which properly and specifically belong to the Peninsular treasury, owing to their having been at all times properly and specifically belonging to Cuba.

"To secure the careful examination provided for in the foregoing paragraph, a Commission consisting of competent and impartial persons shall be appointed by the two High Contracting Parties. The manner of this appointment shall be determined in this treaty by a separate article."

The American Commissioners do not feel disposed to concur with the Spanish Commissioners in the exception made by the latter in the second paragraph of Article III. of their draft, regarding what is called patrimonial property of the state. The state, under the Spanish laws, exercises all rights of ownership over the property declared by law to be public property, and it is plain that in this case the cession of the sovereignty carries with it the cession of all those rights. But the state in Spain can also, in the capacity of a body politic, or corporation, acquire and hold real property, by the same means and through the same processes as private persons can do under civil municipal law. This peculiar kind of property was the one referred to in the exception suggested by the Spanish Commissioners. Notwithstanding this fact, and in order to show once more that they feel disposed to compromise differences, and to promote peace, the Spanish Commissioners do hereby waive the said exception, and accept that the patrimonial property of the state be also included in the cession and transfer of the sovereignty of Spain over the Antilles.

As to the other exceptions which were then suggested, the Spanish Commission cannot believe that the American Commission will ever refuse to accept them. The American Commission in its draft refers only to individual property. But the Honorable Commissioners of the United States are not ignorant of the fact, and the mere suggestion of it would involve an offense to their great learning, that in addition to individual persons there are other persons, capable in all civil societies, of lawfully acquiring and holding property both real and personal. Commercial and industrial firms, ordinary co-partnerships, public establishments, whether charitable institutions, schools, or others, can in Spain and her colonies acquire and hold property and enjoy the same protection as is given under the laws to the property of individual persons. All the exceptions suggested in the second paragraph of Article III. of the Spanish draft, refer to the property belonging to the said corporate entities, which cannot be considered as individual persons.

Certain phrases to be found in the fourth paragraph of the same article, relating to the delivery of public archives, and stating that the United States shall exercise over them the same rights and be subject to the same obligations as Spain, have attracted the attention of the American Commission. The explanation of the reason why these phrases were used is easy to be made. Properly speaking, the state is not the absolute owner of the public archives, but rather the keeper or depository of the same. It is for this reason that it cannot destroy the documents which belong to them, or dispose of them by sale or otherwise, and also, that no citizen can be deprived of the right to make use of those documents in defense of his rights. Can it be in the power of the state to destroy the Registries of the Etat-civil and with them all the evidence as to the civil condition or status of all its citizens? Can it be in its power to destroy the property registries, wherein the title deeds and the proofs of the ownership of all property are kept and preserved? Certainly not. But this is precisely what is meant by the phrases above mentioned. The United States shall have the same rights as far as their archives are concerned as Spain used to have;—and those rights, the only ones vested in Spain, are also the only ones which she can transfer to the United States.

Nevertheless, and in order to remove from the minds of the American Commissioners any possible doubt as to the real intention of the Spanish Commissioners, in framing as they did the aforesaid Article III, they have decided to consent to modify that article and word it in a different way, omitting to except from the operation of the cession the patrimonial property of the state, and explaining the points which the American Commissioners deemed to be doubtful. Here is the text of the article as amended:

"ARTICLE III.

"In pursuance of the agreement contained in the two preceding articles, Her Catholic Majesty, acting in the same representative capacity in which this treaty is entered into, relinquishes and transfers to the United States all the buildings, wharves, barracks, fortresses, establishments, public highways, and all other real property, which appertain under the law to the public domain, and which as such belong to the Crown of Spain in the Island of Cuba.

"The rights and the property of all kinds whatsoever which up to the date of the ratification of this treaty have been either peacefully exercised, or possessed or held by the provinces, municipalities, public or private institutions, civil or ecclesiastical corporations, or any other collective entities having legal capacity to acquire and hold property in the Island of Cuba, and by private individuals of whatsoever nationality, shall not be included in the relinquishment and transfer above made.

"Her Catholic Majesty also relinquishes and transfers to the United States all the documents and title papers exclusively relating to the sovereignty transferred and accepted and to all rights thereof, which may be found in the archives of the Peninsula. Copies shall also be given to the United States whenever they may ask for them, of the passages concerning the said sovereignty and rights, which may occur in other documents not relating to the Island of Cuba, but to other subjects foreign to it, which may exist in the said archives. And the same shall be observed reciprocally in favor of Spain regarding documents and papers, having nothing to do, either in whole or in part, with the Island of Cuba, now to be found in the Cuban archives, which may be of interest to the Spanish Government.

"All the official archives and registries, whether belonging to the judicial or to the executive departments of the Government, now at the disposal of the Spanish Government and its authorities in the Island of Cuba, and relating to the said Island or its inhabitants, and to their rights and property, shall be left without restriction of any kind at the disposal of the United States, in order that the latter may keep them with the same powers which were heretofore vested in the Spanish Government and authorities.

"Private individuals, whether Spaniards or Cubans, shall have the right to ask for and obtain, in the manner provided by law, authenticated copies of all contracts, last wills and testaments, and other documents to be found in the notarial archives, which are deemed to form part of the judicial or executive archives either in Spain or in Cuba."

Article VI of the Spanish draft did not set forth the reason of the cession made by Spain in favor of the United States of the Island of Porto Rico, the other Spanish Antilles, and of the Island of Guam in the Marianas. That reason nevertheless was explained in the despatch of the Secretary of State of the United States in his answer to the message transmitted to him by the Spanish Government. Said despatch states that the President of the Republic did not demand the payment of any war indemnity, owing to his desire to give testimony of signal generosity, and then it says:

"Nevertheless he cannot be insensible to the losses and expenses of the United States incident to the war or to the claims of our citizens for injuries to their persons and property during the late insurrection in Cuba. He must, therefore, require the cession to the United States and the immediate evacuation by Spain of the Island of Porto Rico and other islands now under the sovereignty of Spain in the West Indies, and also the cession of an island in the Ladrões, to be selected by the United States."

The island designated by them was the Island of Guam.

The Spanish Commissioners have now decided to change the text of the article as formerly framed by them and offer as a substitute another article which will leave on record the reason of the cession. It is quite certain that the American Commission will agree with the Spanish Commission in the advisability of preventing the United States from being shown in the treaty as acquiring gratuitously the said islands. Here is the new text of the article:

"ARTICLE IV.

"In compensation for the loss and expenses incurred by the United States on account of the war and for the claims of their citizens for damages done to their persons or property during the late insurrection in Cuba, Her Catholic Majesty, in the name and in representation of Spain, and constitutionally authorized to do so by the Cortes of the Kingdom, cedes to the United States of America, and the latter accept for themselves the Island of Porto Rico and all other islands in the West Indies which are now under the sovereignty of Spain, and also the Island of Guam in the Marianas or Ladrões Archipelago, which was chosen by the United States by virtue of Article II of the Protocol signed at Washington on August 12 ultimo."

In regard to Article VII in the draft of the Spanish Commission, the latter under-

stands that it is its duty, for the reasons stated in this memorandum, to leave it as it is, with no other change than that which is required indispensably to put it in harmony with the new articles now introduced. In consequence thereof, it will read as follows:

"ARTICLE V.

"This cession of sovereignty over the territory and inhabitants of Porto Rico and the other islands mentioned is understood to consist in the transfer of the rights and obligations, property and documents relating to the sovereignty over said islands, in the same way as was provided in the preceding articles in reference to the relinquishment and transfer of the sovereignty over the Island of Cuba."

It results, in recapitulation, that the only question up to now in existence between the two Commissions and awaiting their decision is a question of money, which as far as one of the High Contracting Parties is concerned is relatively of secondary importance. That question is the one which relates to the colonial debt.

The Spanish Commissioners understand that a question of such a nature as this cannot fail to be solved satisfactorily between two parties, one of which is the greatest nation of the new world, immensely rich and prosperous, blessed with inexhaustible resources, whether due to nature or to the prodigious activity of its inhabitants, which on the other hand acquires by this treaty territories of great importance, and thereby fulfils an aspiration of its policy in America, while the other party is a great and noble nation of the old world, a cordial friend of her late antagonist in days for her more prosperous, but now impoverished through the misfortunes heaped upon her during the century which is about to terminate; whose treasury is overburdened by obligations, and for whom the present treaty will mean the solemn confirmation of the loss of the last remnants of her American empire, although through her discovery of the new world she was instrumental in the very existence of the Great American Republic, and to the enrichment of the modern nations, perhaps at the expense of her own welfare and to the detriment of the full development of the great elements of wealth accumulated in her own bosom but neglected through her desire preferentially to attend to her colonies, creatures who like all others in the order of nature enlist the utmost solicitude on the part of their mother, who feeds and supports them at the sacrifice of her own welfare.

True copy:

EMILIO DE OJEDA.

Protocol No. 10.

CONFERENCE

of October 27, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners presented their written reply, copy of which is hereto annexed, to the memorandum filed by the Spanish Commissioners at the last session in support of the articles which they presented on the 21st instant, and which were afterwards rejected by the American Commissioners.

The American Commissioners, referring to the acceptance by the Spanish Commissioners, in the terms expressed in the protocol of the last session, of the articles presented by the American Commissioners, said that they were uncertain whether the acceptance was intended to apply to the articles first or to those last presented by them, and suggested that, if it was immaterial to the Spanish Commissioners, the American Commissioners preferred that the acceptance should be taken to refer to the articles first presented by them, as those articles contained provisions as to public archives and records.

THE PRESIDENT of the Spanish Commission replied that, as his acceptance of the articles was conditional upon the approval of the treaty of peace, he had no objection to accepting these or any other articles, and especially as the first article of the American project was the same, saving differences in diplomatic form, as the first paragraph of the first Spanish articles; but that he did not mean that he renounced the second paragraph of that article, and that with respect to this part and to the other articles presented by Spain, he reserved, as provided in the protocol of the fifth session, all the rights therein contained, if there was no ultimate agreement upon the whole.

THE PRESIDENT of the American Commission replied that the American Commissioners were content to take the acceptance

Protocolo No. 10.

CONFERENCIA

Del 27 de Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de América.

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de España:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leída y aprobada el acta de la sesión anterior.

Los Comisarios americanos hacen entrega de su contestación escrita que es anexa al acta presente, al Memorandum presentado por los españoles en apoyo de los artículos presentados por ellos en la sesión del 21 del corriente, que fueron rechazados por los Comisarios americanos.

Los Comisarios americanos refiriéndose a la aceptación por los Comisarios españoles, en los términos expresados en el acta de la última sesión, de los artículos presentados por los Comisarios americanos, manifestaron hallarse inciertos sobre si dicha aceptación se refería a los artículos primeramente presentados por ellos o a los últimos, y sugirieron que si a los Comisarios españoles les era indiferente, los Comisarios americanos preferirían que la aceptación recayese sobre los artículos primeramente presentados por ellos, por contener estos disposiciones relativas a los Archivos públicos y expedientes.

El Presidente de la Comisión española contesta que siendo su aceptación de dichos artículos condicional de la aprobación del tratado de paz, no tiene inconveniente en aceptar estos u otros artículos, tanto mas cuanto que el artículo 1o del proyecto americano, es igual, salvo las diferencias de cancellería, al primer párrafo del artículo español; pero que esto no significa que renuncie a la segunda parte de dicho artículo 1o presentado por España, y que en cuanto a esta parte del artículo y a los demás presentados por España, se reserva todos los derechos que contienen, como se convino en el acta de la 5a sesión, si no hubiese acuerdo ulterior sobre la totalidad.

El Presidente de la Comisión americana contesto que las Comisarios americanos se avenían a que la aceptación de los Comisa-

of the Spanish Commissioners, as expressed in their paper, and entered in the protocol of the last conference, as applying to the articles last submitted, which were expressed in the words of the Protocol of August 12, 1898.

THE PRESIDENT of the Spanish Commission repeated that the form and wording of those or of the other articles was a matter of indifference to him; and he asked whether the American Commissioners would object to inserting in the article in which the cession of Porto Rico and the other islands in the West Indies and the Island of Guam was made, or in any of the other articles of the treaty, a statement that the cession was made as indemnity for the expenses of the war, and the injuries suffered during it by American citizens.

THE PRESIDENT of the American Commission replied that the articles should stand as when they were accepted, and, he considered, as disposed of for the present; adding further that the American Commissioners did not mean to be understood that it should not appear in some proper form in the treaty that the cession of Porto Rico and the other islands above referred to was on account of indemnity for the losses and injuries of American citizens and the cost of the war. This view had been expressed in the note addressed to the Spanish Government containing the demand of the President of the United States, and the American Commissioners recognized the force and meaning of that demand.

THE PRESIDENT of the Spanish Commission said that it was not his intention now to discuss this point, but to state his desire that the question and the answer to it should be entered in the protocol.

THE PRESIDENT of the Spanish Commission then inquired whether the American Commissioners were ready to answer the written proposal presented by the Spanish Commissioners at the last session, in which they accepted conditionally the two articles of the American draft.

THE PRESIDENT of the American Commission said that he understood that in the said proposal the American Commissioners were invited to present their propositions in regard to the Philippine Islands, and said that as this matter was of capital importance, and as the American Commissioners were not yet ready to submit a proposal in regard to it, he would propose an adjournment in order that they might have an opportunity to do so, and would suggest that in the mean time the Secretaries should endeavor to agree on the terms of the article relating to public property, archives and records, in Cuba, Porto Rico and other islands in the West Indies, and Guam, for submission to the Joint Commission.

This suggestion was adopted, as well as the proposal for an adjournment; and it was agreed, on motion of the American Commissioners, that the Joint Commission should meet again on Monday, the 31st of

rios españoles, tal cual la expresaba el escrito consignado en el acta de la última conferencia, se refiese a los artículos últimamente presentados, expresados en las palabras del Protocolo de 12 de Agosto de 1898.

El Presidente de la Comisión española repite que le es indiferente la forma y redacción de unos u otros artículos, y pregunta a la Comisión americana si esta tendría inconveniente en que en el artículo en que se trata de la cesión de Puerto Rico, otras islas de las Antillas y la de Guam, o en otro cualquiera de los artículos del tratado se exprese que esta cesión es en concepto de indemnización por los gastos de la guerra y los perjuicios sufridos durante ella por los ciudadanos americanos.

El Presidente de la Comisión americana contestó que los artículos debían permanecer como estaban cuando fueron aceptados, debiendo por ahora considerarse como terminados, y añadió que los Comisarios americanos no querían significar que se entendiese que no habría de figurar en forma adecuada en el tratado que la cesión de Puerto Rico y las demás islas anteriormente mencionadas, era a cuenta de indemnización por pérdidas y agravios de los ciudadanos americanos y gastos de la guerra. Este punto de vista había sido expresado en la nota dirigida al Gobierno español en que se consignaban las demandas del Presidente de los Estados Unidos y los Comisarios de los Estados Unidos reconocían la fuerza y el significado de esta demanda.

El Presidente de la Comisión española dice que no era su intención el debatir ahora este punto, sino el de hacer constar su deseo que figuren en el protocolo su pregunta y la contestación dada.

El Presidente de la Comisión española pide entonces a la Comisión americana que conteste a la proposición escrita hecha en la sesión anterior por los Comisarios españoles, al aceptar condicionalmente los dos artículos del proyecto americano.

El Presidente de la Comisión americana manifiesta que entiende que en dicha proposición se les invita a presentar sus proposiciones relativas a Filipinas, y dice que siendo este punto de importancia tan capital, y no hallándose la Comisión americana en disposición de formular aquellas todavía, propone un aplazamiento para hacerlo y sugiere que entre tanto los Secretarios Generales de ambas Comisiones se pongan de acuerdo para redactar un artículo relativo a la propiedad pública, a los Archivos, expedientes y documentos notariales en Cuba, Puerto Rico, otras islas de las Antillas y Guam que será sometido a la Comisión en pleno.

Se aprueba esta sugerencia así como el aplazamiento pedido por la Comisión americana, y se conviene que los Comisarios se reúnan el lunes 31 de Octubre a las 2 p. m., en que la Comisión americana presen-

October, at two o'clock p. m., when the American Commissioners should present a proposal on the subject of the Philippines; and that if by that time the American Commissioners were not prepared to do so the meeting should be postponed to a later day.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

tara sus proposiciones sobre Filipinas, sin perjuicio de que si para entonces no hubiere aun podido elaborar sus proposiciones la Comisión americana, se acuerde un nuevo aplazamiento.

Firmado: E. MONTERO RIOS,
B. DE ABARZUA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA.
RAFAEL CERRERO,
EMILIO DE OJEDA.

Annex to Protocol No. 10.

To the memorandum submitted by the Spanish Commissioners in support of the articles presented by them on the 21st instant, and rejected by the American Commissioners on the 24th instant, the latter submit under the rules the following reply:

The memorandum opens with an expression of the deep regret with which the Spanish Commissioners have acquiesced themselves with the paper in which the American Commissioners, at the session of the 17th instant proposed to substitute for the articles previously presented by them, in relation to Cuba, Porto Rico and other islands in the West Indies, and the Island of Guam in the Ladrões, the precise stipulations of the first and second articles of the Protocol of August 12, 1898, neither adding thereto nor subtracting therefrom.

The American Commissioners on their part feel equal regret that in the memorandum now under consideration the Spanish Commissioners should have seen fit to reject that proposal on grounds which disclose a misconception both of the proposal itself and of the stipulations of the Protocol on which it was based.

The American Commissioners in their proposal of the 17th instant stated that they were prepared, for the purpose of disposing of the question of Cuba, Porto Rico and Guam, simply to embody in the treaty the precise stipulations of the Protocol on those subjects." The American Commissioners are still prepared to take this step, believing that the stipulations in question would suffice for the accomplishment of the purposes to which they relate. But they have never asserted that the treaty of peace should be limited, in respect of Cuba, Porto Rico, and Guam, to the repetition of the precise terms of the Protocol and those subjects. Their position is, however, that any clauses that may be added must be devoted to the execution of the stipulations of the Protocol, and must not impair them or affix conditions to what was unconditional.

Having adverted to the misconception of their proposal, the American Commissioners will point out the misconception by the Spanish Commissioners of the Protocol. The Spanish Commissioners observe that as the stipulations of the Protocol form part of a binding agreement, which they properly declare the Protocol to be, it is useless merely to reproduce them in the treaty that is to be elaborated in the conference. The Spanish Commissioners, however, seem to forget that the Protocol was an executory agreement, and that it cannot be assumed to be useless to ask either party now to do what in that agreement it promised to do. "Spain will," so reads Article I. of the Protocol, "relinquish all claim of sovereignty over and title to Cuba." This is the promise. The American Commissioners, having come hither to claim the fulfilment of that promise, ask the Spanish Commissioners, clothed with full powers to conclude a treaty of peace, to say in that treaty: "Spain hereby relinquishes all claim of sovereignty over and title to Cuba."

Upon what theory can this be deemed a "useless" or "redundant" stipulation? Is it not, on the contrary, manifest that the treaty of peace, no matter what else it may include, must contain a stipulation to this effect?

Indeed, in offering the precise stipulations of the Protocol, the American Commissioners sought to put aside the controversy raised by the Spanish proposals as to the relinquishment of sovereignty and the assumption of the Cuban debt, and to afford the Spanish Commissioners an opportunity to meet them on the common ground of what the two Governments had unmistakably agreed to. It was and is now apparent that on the composite subject, as the Spanish Commissioners consider it to be, of the relinquishment of sovereignty over Cuba and the assumption of the Cuban debt, the views expressed on the one side and on the other are irreconcilable, and that, unless some common ground is found, the conference is at an end. In this crisis the American Commissioners conceived that both sides might, without any compromise of principle or of opinion, agree that, instead of amplifying the words of the Protocol, or substituting for them argumentative stipulations, they would execute the promise in the words in which it was made. They regret that the Spanish Commissioners rejected this conciliatory proposition.

The Spanish Commissioners, in the memorandum now under consideration, recur to the distinction which they have sought to make between the words "abandon" and "relinquish." On this verbal question, which was raised by the Spanish Commissioners in their memorandum of the 11th of October, the American Commissioners find no occasion to add anything to what they have already said; but they feel called upon to repel the imputation that they have sought either to leave Cuba in a derelict condition or to evade any responsibility to which their Government is by its declarations or its course of conduct committed.

In their proposal of the 17th instant, the American Commissioners made the following declaration:

"The United States recognizes in the fullest measure that in requiring the relinquishment of all claim of Spanish sovereignty and the evacuation of the Island of Cuba it has assumed all the obligations imposed by the canons of international law and flowing from its occupation. The United States, so far as it has obtained possession, has enforced obedience to law and preservation of order by all persons. It is not disposed to leave the Island a prey to anarchy or misrule."

By this declaration it is manifest that the American Commissioners have not contemplated the reduction of Cuba to the condition of a derelict and abandoned territory. They concede, however, the justice of the Spanish contention that the obligations which the United States have assumed with respect to Cuba should be acknowledged in the treaty, and they stand ready to make such acknowledgment. They are ready to insert proper stipulations as to the protection of life and property in Cuba during its occupation by the United States, and as to the aid and guidance which it may be necessary for the United States, in the present distracted condition of the Island, to give.

The Spanish memorandum refers to the capitulation of Santiago de Cuba, as well as to the evacuation of Cuba under Article IV. of the Protocol of August 12, 1898, as proof that the Island is to be delivered to the United States. So far as this argument goes it is perfectly sound. By the evacuation of Cuba the Island is to pass for the time being into the possession of the United States, and the United States will, for the time being, occupy it. The Spanish memorandum, however, inquires whether, in view of these facts, it is possible to deny that Spain, in relinquishing her "sovereignty" over Cuba, has the right to demand that it shall be received by the United States.

This argument begs the question. The American Commissioners have never denied that the Island of Cuba will, upon its evacuation by the Spanish forces, come into the possession of the authorities of the United States; but this possession is by no means to be confounded with the sovereignty of the Island, which the United States has long since declared to Spain an intention not to assume. The United States will take possession of the Island for the purpose of pacifying it, but not as titular sovereign; and it is not to be charged with proposing to reduce it to the condition of a "desert territory in Africa," merely because it declines to assume the character of such sovereign.

As to the statement of the Spanish memorandum that Spain's relinquishment of sovereignty over Cuba was described by the American Commissioners, in the second paragraph of the first article presented by them on October 3, as a cession, they have only to say that they have searched the paragraph and the whole article for the word in question, and that they are forced to the conclusion that an error in translation has misled the Spanish Commissioners.

The Spanish Commissioners, adverting to the citation by the American Commissioners of the dictionary of Escriche, seek to minimize the importance of that citation by saying that the dictionary serves as a mentor for young lawyers in the early period of their professional life. The American Commissioners, however, can do no less than infer from this statement that the work in question is recognized in Spain as being the highest authority.

The American Commissioners are at a loss to conjecture what more they can say to render their position clear as to the purpose and meaning of the relinquishment by Spain of all claim of sovereignty over Cuba as stipulated in Article I. of the Protocol. The various forms which the argument of the Spanish Commissioners on this subject assumes are nothing but variations of their misconstruction of the American Commissioners' position. For example: The Spanish memorandum argues that the stipulations in the Protocol in regard to the relinquishment of sovereignty over Cuba and the cession of Porto Rico are, in spite of a total difference in language, to be considered as the same in effect, because the American Commissioners, in the articles presented by them on the 3rd instant, seemed to contemplate that the archives in Cuba, as well as those in Porto Rico, shall be in the possession of some one to whom application for copies may be made. The Spanish memorandum declares that this would be impossible unless some one has the documents in his possession. This is quite true; but the observation would be meaningless if it were not for the fact that the Spanish Commissioners insist upon saying that the American Commissioners, because they decline to accept for their Government the sovereignty of Cuba, have contended that the Island must be abandoned by Spain in the sense of being left derelict.

It is perfectly manifest that the contracting parties in deliberately employing different stipulations with respect to Cuba and Porto Rico neither expressed nor intended to express the same idea. This difference is so clearly and fully explained in the memorandum of the American Commissioners of the 14th of October that it seems to be idle to enlarge upon it.

The American Commissioners have never based their position as to Spain's relinquishment of all claim of sovereignty over Cuba upon the English text of the Protocol as distinguished from the French text, as the Spanish memorandum suggests. On the contrary, in their memorandum of the 14th of October, the American Commissioners distinctly declared that the words used with reference to Cuba in the French text were precisely the same in meaning as those used in the English text.

In their memorandum of the 14th of October, the American Commissioners applied to their position as to Spain's relinquishment of all claim of sovereignty over Cuba a simple test. If Spain, they said, had, in reply to the demands of the United States, declared that she relinquished her sovereignty over Cuba, but did not relinquish it to the United States, no one could have imagined that the demand of the United States would not have been satisfied. The Spanish memorandum intimates that everybody would have thought so except the United States, and declares that there is no one either in Europe or in America who believes that the United States would have been content with Spain's withdrawing from the island and would have abstained from all intervention therein, leaving the inhabitants to continue to fight among themselves. It is obvious, however, that Spain's relinquishment of sovereignty over Cuba and the subsequent intervention of the United States for the purpose of establishing order there are different matters. Whatever the United States might in certain contingencies have done with respect to Cuba, Spain would have satisfied the demands of that Government by withdrawing from the island. The question of subsequent intervention in its affairs would then have lain between the United States and the people of the island themselves. The United States certainly could not have complained if Spain, while relinquishing her sovereignty, had refused to aid in or be a party to this intervention.

In the Spanish memorandum an effort is made to answer that part of the argument submitted by the American Commissioners on the 14th instant in which it is maintained that the so-called Cuban debt is not in any sense a debt of Cuba, but that it is in reality a part of the national debt of Spain. The American Commissioners were able to show that the debt was contracted by Spain for national purposes, which in some cases were alien and in others actually adverse to the interests of Cuba; that in reality the greater part of it was contracted for the purpose of supporting a Spanish army in Cuba; and that, while the interest on it has been collected by a Spanish bank from the revenues of Cuba, the bonds bear upon their face, even where those revenues are pledged for their payment, the guarantee of the Spanish nation. As a national debt of Spain, the American Commissioners have never questioned its validity.

The American Commissioners, therefore, are not required to maintain, in order that they may be consistent, the position that the power of a nation to contract debts or the obligation of a nation to pay its debts depends upon the more or less popular form of its government. They would not question the validity of the national debt of Russia, because, as the Spanish memorandum states, an autocratic system prevails in that country. Much less do the American Commissioners maintain that a nation cannot cede or relinquish sovereignty over a part of its territory without the consent of the inhabitants thereof, or that it impairs the national obligation of its debt by such cession or relinquishment.

Into these questions they do not think it necessary to enter.

As to the rights, expectations, or calculations of creditors, to which the Spanish memorandum adverts, the American Commissioners have only to say that as regards the so-called Cuban debt, as explained in their memorandum of the 14th instant, the creditors, from the beginning, took the chances of the investment. The very pledge of the national credit, while it demonstrates on the one hand the national character of the debt, on the other hand proclaims the notorious risk that attended the debt in its origin, and has attended it ever since.

The Spanish memorandum observes that in the last twenty years the Antilles have been represented in the Spanish Cortes and declares that their representatives have participated in all legislative acts bearing upon colonial obligations without ever protesting against their lawfulness or binding force. The information in the possession of the American Commissioners leads to a different conclusion.

The American Commissioners have in their hands the *Diario de las Sesiones de Cortes*, for Thursday, the 29th of July, 1886, when the Cuban budget for 1886-1887 was introduced and discussed. By this record it appears that on the day named Senor Fernandez de Castro, a Senator from Cuba, referring to the budgets of 1880, 1882, 1883, 1884, and 1886, declared that he had objected to all of them, and that no Cuban debt ought to be created, since the obligations embraced in it were national and not local. He entered into a brief examination of the items which constituted the debt, and created something of a sensation by pointing out that quinine had been consumed in Cuba, during the war of 1868-1878, at the rate of \$5,000 a week.

Another Cuban Senator, Senor Morelos, supported the views of Senor Fernandez de Castro.

Senator Carbonell, representing the University of Havana, in a speech of great power, continued the argument, saying: "Have the people involved in this matter ever been consulted? The country has not been heard, and now for the first time has become acquainted with the fact that it has to pay such debts."

The Cuban and Porto Rican Senators, Senores Portuondo, Ortiz, Labia, Montoro, Fernandez de Castro, Figueras and Viscarrondo, went further, and introduced a bill to provide for the payment by Spain of the so-called Cuban debt in proportion to the productive capacity of the various provinces.

The protests of the colonial Senators were not heeded, but their justice was recognized by no less a Spanish statesman than Senor Sagasta, the present Premier of Spain, then in the opposition, who said:

"Our treasury is not now sufficiently provided with funds to aid Cuba in the way and to the extent that we should like to do; but I say the Peninsula must give all that it can, and we must do without hesitation all that we can."

Was not this a clear acknowledgment of the national character of the debt?

Perhaps not so clear as that made in the decree of autonomy for Cuba and Porto Rico, signed by the Queen Regent of Spain on the 25th of November, 1897, and countersigned by Senor Sagasta, as President of the Council of Ministers. In Article II. of the "Transient Articles" of the decree, we find the following declaration:

"Article II. The manner of meeting the expenditures occasioned by the debt which now burdens the Cuban and Spanish treasury, and that which shall have been contracted until the termination of the war, shall form the subject of a law wherein shall be determined the part payable by each of the treasuries and the special means of paying the interest thereon, and of the amortization thereof, and, if necessary, of paying the principal.

"Until the Cortes of the Kingdom shall decide this point, there shall be no change in the conditions on which the aforesaid debts have been contracted, or in the payment of the interest and amortization, or in the guarantee of said debts, or in the manner in which the payments are now made.

"When the apportionment shall have been made by the Cortes it shall be for each one of the treasuries to make payment of the part assigned to it.

"Engagements contracted with creditors under the pledge of the good faith of the Spanish nation shall in all cases be scrupulously respected."

In these declarations we find a clear assertion not only of the power of the Government of Spain to deal with the so-called Cuban debt as a national debt, but also a clear admission that the pledge of the revenues of Cuba was wholly within the control of that Government, and could be modified or withdrawn by it at will without affecting the obligation of the debt.

As to what is stated in the Spanish memorandum touching the aid given to Cuba in the last century or the early part of the present century by the Vice-Royalty of Mexico, the American Commissioners might offer certain pertinent historical observations; but they deem it necessary now to say only that Mexico is not making any claim before this Joint Commission, either directly or indirectly.

As to the statement that Cuba has produced during a very few years in the present century a surplus which was turned over to the treasury of the Peninsula, the American Commissioners will cite the justly celebrated "Diccionario Geografico-Estadistico-Historico de la Isla de Cuba," by Senor Don Jacobo de la Pezuela, by which (see article on Senor Don Claudio Martinez de Pinillos) it appears that after 1825 not only were all the expenses of the island paid out of its revenues, but surpluses were sent, annually and regularly, to the mother country. These surpluses from 1850 to 1860 amounted to \$34,416,835. And it is to be observed that in addition to the regular annual surpluses turned over after 1825, extraordinary subsidies were from time to time granted to the Home Government. It was for services rendered in matters such as these that Senor Pinillos received the title of Count of Villanueva.

As to the recent "advances" to Cuba, referred to in the Spanish memorandum, it is to be regretted that details were not given. But, by the very term "advances," it is evident that the Spanish memorandum does not refer to gifts, but to expenditures for the reimbursement of which Cuba was expected ultimately to provide; and the American Commissioners do not doubt that these expenditures were made for the carrying on of the war, or the payment of war expenses, in Cuba.

When the American Commissioners, in their memorandum of the 14th instant, referred to the Cuban Insurrection of 1868 as the product of just grievances, it was not their intention to offend the sensibilities of the Spanish Commissioners, but to state a fact which they supposed to be generally admitted. They might, if they saw fit to do so, cite the authority of many eminent Spanish statesmen in support of their remark. They will content themselves with mentioning only one. On February 11, 1869, Marshal Serrano, President of the Provisional Government at Madrid, in his speech at the opening of the Constituent Cortes, referred to the revolution in

Spain and the insurrection in Cuba in the following terms: "The Revolution is not responsible for this rising, which is due to the errors of past Governments: and we hope that it will be speedily put down and that tranquillity, based upon liberal reforms, will then be durable." (Annual Register, 1899, page 255.)

The American Commissioners have read without offence the reference in the Spanish memorandum to the Indian rebellions which it has been necessary for the United States to suppress, for they are unable to see any parallel between the uprisings of those barbarous and often savage tribes, which have disappeared before the march of civilisation because they were unable to submit to it, and the insurrections against Spanish rule in Cuba, insurrections in which many of the noblest men of Spanish blood in the island have participated.

Nor are the American Commissioners offended by the reference of the Spanish memorandum to the attempt of the Southern States to secede. The Spanish Commissioners evidently misconceive the nature and the object of that movement. The war of secession was fought and concluded upon a question of constitutional principle, asserted by one party to the conflict and denied by the other. It was a conflict in no respect to be likened to the uprisings against Spanish rule in Cuba.

THE AMERICAN COMMISSIONERS ARE UNAWARE OF THE GROUND ON WHICH IT IS ASSERTED IN THE SPANISH MEMORANDUM THAT THE UNITED STATES HAS BEEN COMPELLED TO ADMIT THAT THE CUBAN PEOPLE ARE AS YET UNFIT FOR THE ENJOYMENT OF FULL LIBERTY AND SOVEREIGNTY. It is true that an intimation of such unfitness was made in the note of the Spanish Government on the 22d of July last. The Government of the United States, in its reply of the 30th of July, declared that it did not share the apprehensions of Spain in this regard, but that it recognized that in the present distracted and prostrate condition of the island, brought about by the wars that had raged there, aid and guidance would be necessary.

The reference in the Spanish memorandum to the obligations of Porto Rico is not understood by the American Commissioners, who had been led to believe that there was no Porto Rican debt. On June 30, 1896, Senor Castellano, Colonial Minister of Spain, in submitting to the Cortes the budget of Porto Rico for 1896-97, the last one, as it is understood, ever framed, said:

"The duty to report to the National representation the financial condition of Porto Rico is exceedingly gratifying. It shows the ever growing prosperity of the Lesser Antille, which, through the multiplicity of its production and the activity of its industry, has succeeded in securing markets for its surpluses in the whole world.

"It being without any public debt (*sin deuda publica*), all its necessities being covered, its treasury being full to repletion, its public services being fulfilled with regularity, with economy in the expenses, and with a constant development of the revenues of the state, the spectacle afforded by Porto Rico is worthy of attention."

The *Gaceta de Madrid* of July 1, 1896, which published this budget, published also a law, approved June 29, 1896, providing for the disposition to be made of the surplus of \$1,750,000 in the treasury of Porto Rico at the expiration of the fiscal year 1895-96.

No Porto Rican loan was ever contracted or floated before 1896.

No Porto Rican bonds are quoted in the markets of Europe or America.

It is possible that the Governor-General of Porto Rico may have borrowed money from a bank or from private persons in order to meet in advance expenses authorized by the budget, and that he may have given promissory notes for the amount borrowed, but these notes, paid on maturity, do not constitute a Porto Rican debt, in the sense claimed by the Spanish Commission.

Nor is it to be supposed, in view of the flourishing condition of the colonial finances, as explained by the Spanish Minister of the Colonies, that any note of the kind referred to remains unpaid.

The American Commissioners are not acquainted with the works of the publicists who maintain that the thirteen original United States paid to Great Britain 15,000,000 pounds sterling, presumably for the extinguishment of colonial debts. The American Commissioners, however, feel no interest in the matter, since the statement is entirely erroneous. The preliminary and definitive treaties of peace between the United States and Great Britain of 1782 and 1783 were published soon after their conclusion, and have since been republished in many forms. They are the only treaties made between the two countries as to American independence, and they contain no stipulation of the kind referred to.

Nor do the American Commissioners perceive the relevancy of the citation in the Spanish memorandum of the sums paid by the United States to France, Spain, Russia and various Indian nations for territory acquired from them. In none of

these cases does it appear that the United States assumed any debts. The money paid by the United States was paid for the territory.

As to the case of Texas, the American Commissioners have only to observe that Texas was an independent State which yielded up its independence to the United States and became a part of the American Republic. In view of this extinction of the national sovereignty, the United States discharged the Texan debt. Indeed, the whole reference made in the Spanish memorandum to the case of Texas is quite inaccurate. The United States did not demand of Mexico the independence of Texas. That independence was established by the inhabitants of Texas themselves, and had long been acknowledged, both by the United States and by other powers, before the voluntary annexation of Texas to the United States.

The payments of money made by the United States to Mexico for territory obtained by the former from the latter at the close of the Mexican war are referred to in the Spanish memorandum, but these payments established no principle. They were made by the United States as a part of the general settlement with Mexico, and it will hardly be argued that if the treaty of peace had contained no stipulation in the subject, anything would have been due from the United States.

The Spanish memorandum, however, refers to these transactions as if they constituted precedents for the proposal put forward by the Spanish Commissioners for the arbitration by the United States and Spain of the question whether the whole or any part of the alleged Cuban and Porto Rican debts should be assumed or guaranteed by the United States. The American Commissioners are compelled to take a different view of the subject. They have no doubt that if during the negotiations with Mexico a proposal had been put forward by either party for the arbitration of the question whether Mexico should cede the territories demanded by the United States, or whether if they were ceded the United States should pay for them, and if so how much, such proposal would have been rejected by the other party as entirely inapplicable to the transaction.

So it is in the present case. The Commissioners of the United States and of Spain have met for the purpose of concluding a treaty which is to terminate a war. The matters involved in the transaction are matters for mutual adjustment and a definitive settlement. They are matters to be determined by the parties themselves, and not by any third party. Arbitration comes before war, to avert its evils; not after war to escape its results.

As was shown by the American Commissioners in their memorandum of the 14th of October, the burdens imposed by Spain upon Cuba in the form of the so-called Cuban debt have been the fruitful source of Cuban insurrections. In the opinion of the American Commissioners, the time has come for the lifting of this burden, and not for the submission to a third party of the question whether it shall be lifted at all.

Having answered so much of the Spanish memorandum as relates to the vital articles of the Spanish proposals and expounds the Spanish views regarding them, the American Commissioners do not think it necessary to discuss the remaining articles, which may be, for the purpose of this discussion, regarded as merely subsidiary, and as to which they make all necessary reservations.

Near the close of their memorandum, the Spanish Commissioners say:

"It appears by this recapitulation that the only question now pending between the two Commissions and awaiting their decision is a question of money, which, so far as one of the High Contracting Parties is concerned, is relatively of secondary importance. That question is the one which relates to the colonial debt."

In this conclusion the American Commissioners concur.

The American Commissioners have maintained that the proposal by the Spanish Commissioners that the United States shall assume the so-called Cuban debt is in reality a proposal to affix a condition to the unconditional promise made by Spain in the Protocol of August 12, 1898, to "relinquish all claim of sovereignty over and title to Cuba"; and they have further maintained that the abstention of Spain from proposing such a condition at that time precludes her from proposing it now. The American Commissioners have declared, and now repeat, that if such a proposal had been made during the negotiations that resulted in the conclusion of the Protocol it would have terminated them, unless it had been withdrawn.

In confirmation of the position that the Spanish Commission is now precluded from proposing the assumption by the United States of the so-called Cuban debt, the American Commissioners, besides invoking the unconditional stipulation of the Protocol, are able to point to the fact that the Spanish Government, in the correspondence that resulted in the conclusion of that instrument, took the precaution, in replying to the demand of the United States for the relinquishment by Spain of all claim of sovereignty over Cuba, and her immediate evacuation of the island, to refer to the duty which in her opinion rested upon the United States under the circumstances to provide for the protection of life and property in the island until it

should have reached the stage of self-government. In his note of August 7, 1898, the Duke of Almodovar, replying to the demand of the United States, said:

"The necessity of withdrawing from the territory of Cuba being imperative, the nation assuming Spain's place must, as long as this territory shall not have fully reached the condition required to take rank among other sovereign powers, provide for rules which will insure order and protect against all risks the Spanish residents, as well as the Cuban natives still loyal to the mother country."

If to this reservation, which the American Commissioners have declared their readiness to recognize in the treaty, the Spanish Government had desired to add another on the subject of the Cuban debt, the opportunity then existed and should have been seized. Indeed, the insertion of a few words in the reservation actually made would have rendered it applicable to the so-called Cuban debt as well as to the protection of life and property.

A labored argument is made in the memorandum submitted by the Spanish Commissioners to prove that the Government of the United States in declining to take upon itself the so-called Cuban debt is acting in violation of all principles of international law and assumes an attitude hitherto unknown in the history of civilized nations. Cases supposed to be apposite are cited, showing the assumption of national debts where one sovereignty is absorbed by another, or a division of national indebtedness where a nation is deprived of an integral part of its domain, either by cession, or the attainment of independence by a colony theretofore charged with raising a part of the national revenue. Elsewhere we have pointed out the differences manifestly existing between the cases cited and the one in hand.

The United States may well rest its case upon this point upon the plain terms of the Protocol, which, as the memorandum submitted by the Spanish Commissioners well says, contains the agreement between the parties — "for no other was formulated between the two parties," and which is executed when Spain relinquishes all claim of sovereignty over and title to Cuba. If the question were still open the United States might well challenge the fullest inquiry into the equity of this demand.

It is urged in the Spanish Commissioners' memorandum that the United States, erroneously believing in the justice of the cause of Cuban independence, made it its own, and took up arms in its behalf. "The United States," so declares the Spanish memorandum, "made a demand on Spain, and afterwards declared war on her, that Cuba might become free and independent." The causes of the demand of the United States for the termination of Spanish sovereignty in Cuba are amply shown in the history of the events which preceded it.

For many years the United States patiently endured a condition of affairs in Cuba which gravely affected the interests of the nation. As early as 1875 President Grant called attention to all its dread horrors and the consequent injuries to the interests of the United States and other nations, and also to the fact that the agency of others, either by mediation or by intervention, seemed to be the only alternative which must sooner or later be invoked for the termination of the strife.

During that administration, notwithstanding that it was clearly intimated to Spain that the United States could no longer endure the situation—which had become intolerable—no unfriendly action was taken, and for ten years it suffered all the inconvenience and deprivation, destruction of trade and injury to its citizens incident to the struggle, which was ended by the Peace of Zanjón, only to break out again and to be waged with every feature of horror and desolation and profitless strife which had characterized the former struggle. President Cleveland, in his Annual Message of 1896, was constrained to say to the Congress of the United States: "When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its re-establishment has degenerated into a strife which means nothing more than the useless sacrifice of human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge."

Throughout President Cleveland's administration this situation was patiently endured, at great loss and expense to the United States, which then and at all times was diligent in maintaining the highest obligations of neutrality, through the vigilance of its navy and its executive and judicial departments. The present Chief Executive of the United States, in his first Annual Message, in 1897, again called attention to the disastrous effects upon our interests of the warfare still being waged in Cuba. The patient waiting of the people of the United States for the termination of these conditions culminated in the Message of April 2, 1898, of the President to Congress, in which he said: "The long trial has proved that the

object for which Spain has waged the war cannot be attained. The fire of insurrection may flame or may smoulder with varying seasons, but it has not been and it is plain that it cannot be extinguished by present methods. The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba. In the name of humanity, in the name of civilisation, in behalf of endangered American interests which give us the right and the duty to speak and to act, the war in Cuba must stop."

Acting upon this Message the Congress of the United States, in the Resolution approved by the President April 20, 1898, which has been so often referred to in the memorandum submitted by the Spanish Commissioners, based its demand that the Government of Spain relinquish its authority and government in the Island of Cuba, and withdraw its forces from Cuba and Cuban waters, upon conditions in Cuba (so near the United States) which were declared to be such that they could no longer be endured.

It is not necessary to recite the record of the events which followed that demand, well known to the members of this Commission, and which are now a part of the history of the world. It is true that the enforced relinquishment of Spanish sovereignty will result in the freedom and independence of the Island of Cuba and not in the aggrandisement of the United States. This resume of events which led to the United States taking up arms is not made to wound the susceptibilities of the Spanish nation, or its distinguished representatives upon this Commission, but, in view of the truth of history and the statements made in the memorandum submitted by the Spanish Commissioners, less could not be said by the representatives of the United States. Not having taken up arms for its own advancement, having refrained from acquiring sovereignty over Cuba, the United States now seeks to attain a peace consistent with its ends and purposes in waging war. In asking, as a victorious nation, for some measure of reparation, it has not emulated the examples of other nations and demanded reparation in money for the many millions spent and the sufferings, privations and losses endured by its people. Its relations to Cuba have been those of a people suffering without reward or the hope thereof.

The American Commissioners therefore feel that they are fully justified both in law and in morals in refusing to take upon themselves in addition to the burdens already incurred the obligation of discharging the so-called colonial debts of Spain—debts, as heretofore shown, chiefly incurred in opposing the object for the attainment of which the resolution of intervention was adopted by the Congress and sanctioned by the President of the United States. If it could be admitted, as argued in the memorandum submitted by the Spanish Commissioners, that the United States in this connection stands as the agent of the Cuban people, the duty to resist the assumption of these heavy obligations would be equally imperative. The decrees of the Spanish Government itself show that these debts were incurred in the fruitless endeavors of that Government to suppress the aspirations of the Cuban people for greater liberty and freer government.

True copy:

JOHN B. MOORE.

Protocol No. 11.

CONFERENCE

of October 31, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners stated that, in accordance with the understanding expressed in the protocol which had just been read, they were prepared to present their proposal on the subject of the Philippines. The proposal was read in English and translated into Spanish and delivered to the Spanish Commissioners. It was as follows:

"The American Commissioners, having been invited by the Spanish Commissioners at the last conference to present a proposition in regard to the Philippine Islands, beg to submit the following article on that subject:

"Spain hereby cedes to the United States the archipelago known as the Philippine Islands, and lying within the following line: A line running along the parallel of latitude 21° 30' North from the 118th to the 127th degree meridian of longitude East or Greenwich, thence along the 127th degree meridian of longitude East of Greenwich to the parallel of 4° 45' North latitude, thence along the parallel of 4° 45' North latitude to its intersection with the meridian of longitude 119° 35' East of Greenwich, thence along the meridian of longitude 119° 35' East of Greenwich to the parallel of latitude 7° 40' North, thence along the parallel of latitude of 7° 40' North to its intersection with the 116th degree meridian of longitude East of Greenwich, thence by a direct line to the intersection of the 10th degree parallel of North latitude with the 118th degree meridian of longitude East of Greenwich, and thence along the 118th degree meridian of longi-

Protocol No. 11.

CONFERENCIA

Del 31 Octubre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

El Presidente de la Comision americana manifiesta que, conforme al acuerdo que consigna el acta que acaba de leerse, los Comisarios americanos estan dispuestos a presentar su proposicion relativa a Filipinas. La proposicion es leida en ingles, despues en espanol, y entregada a los Comisarios espanoles. Su contenido es el siguiente:

"Los Comisario americanos habiendo sido invitados por los Comisarios espanoles en la ultima conferencia a presentar una proposicion respecto de las Islas Filipinas, se permiten someter sobre esta cuestion el articulo siguiente:

"Espana por este articulo cede a los Estados Unidos el archipelago conocido por Islas Filipinas, situado dentro de las lineas aguentes: una linea que corre a lo largo del paralelo 21 grados 30 minutos de latitud Norte desde el grado 118 hasta el grado 127 del meridiano de longitud Este de Greenwich; y de aqui a lo largo del grado 127 meridiano de longitud Este de Greenwich hasta el paralelo 4 grados 45 minutos de latitud Norte; y de aqui a lo largo del paralelo 4 grados 45 minutos latitud Norte hasta su interseccion con el meridiano de longitud 119 grados 35 minutos Este de Greenwich; de aqui a lo largo del meridiano de longitud 119 grados 35 minutos Este de Greenwich, al paralelo de latitud 7 grados 40 minutos Norte; de aqui a lo largo del paralelo de latitud 7 grados 40 minutos Norte hasta su interseccion con el grado 116 del meridiano de longitud Este de Greenwich; de aqui por una linea directa a la interseccion del 10 grados grado para-

tude East of Greenwich to the parallel of latitude 21° 30' North.'

"A proper reference to the cession thus proposed may be inserted in the article of the treaty relating to public property, archives and records in territory which Spain cedes or over which she relinquishes her sovereignty.

"The American Commissioners beg further to state that they are prepared to insert in the treaty a stipulation for the assumption by the United States of any existing indebtedness of Spain incurred for public works and improvements of a pacific character in the Philippines."

The Spanish Commissioners asked for an adjournment in order that they might examine the proposal, and either accept it or present a counter-proposal, and suggested that the Commission should meet again on Friday, the 4th of November, at two o'clock, p. m., without prejudice to asking for a postponement, if it should be necessary.

This suggestion was accepted, and the conference was accordingly adjourned.

Signed : WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELOW REID.
JOHN B. MOORE.

lelo de latitud Norte con el 118 grado meridiano de longitud Este de Greenwich; y de aquí a lo largo del grado 118 meridiano de longitud Este de Greenwich al paralelo de latitud 21 degrees 30 minutes Norte.

"Una mención oportuna de la cesión así propuesta puede ser insertada en el artículo del tratado relativo a la propiedad pública, Archivos y actas notariales en los territorios que España cede o a cuya soberanía renuncia.

"Los Comisarios americanos se permiten además manifestar que están dispuestos a insertar en el tratado una estipulación por la que asuman los Estados Unidos cualquier deuda de España contraída para obras públicas o mejoras de carácter pacífico en Filipinas."

Los Comisarios españoles piden un aplazamiento para estudiar dicha proposición y sugieren que ambas Comisiones se reúnan de nuevo el viernes próximo a las 2 p. m., sin perjuicio de pedir un nuevo plazo si fuese necesario.

Aceptada esta indicación, se levanta la sesión.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

Protocol No. 12.

CONFERENCE

Of November 4, 1898.

Present—
On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:
Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The President of the Spanish Commission stated that, having carefully examined the proposal of the American Commissioners in relation to the Philippines, he presented a counter-proposal on that subject, which counter-proposal he delivered to the Secretary of the Spanish Commission, who handed it to the Secretary of the American Commission.

The American Commissioners desiring to have the counter-proposal translated to them immediately, it was read in English by their interpreter; and it is annexed to the protocol.

The President of the American Commission then stated that as they understood from the reading of the paper that their proposal was rejected, they had under the rules a right to file a memorandum in writing in support thereof, and that, under the circumstances, and in order that the paper presented by the Spanish Commissioners might be carefully translated and considered, the American Commissioners desired an adjournment till Tuesday, the 8th of November, at 2 o'clock p. m.

The Spanish Commissioners agreed to the adjournment, but stated that, as their paper, besides rejecting the American proposal, also put forward a counter-proposal, they understood that they would have the right to submit a memorandum in writing in support of such counter-proposal, if the American Commissioners should reject it.

The Commissioners concurring in opinion upon these matters, the conference was adjourned to the day previously fixed.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WILLIAM P. FRYE,
GEORGE GRAY,
WHITE LAW REID,
JOHN B. MOORE.

Protocolo No. 12.

CONFERENCIA

Del 4 de Noviembre de 1898.

Presentes—
Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:
los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

El Presidente de la Comision espanola manifiesta que despues de haber examinado atentamente la proposicion de los Comisarios americanos relativa a Filipinas, presenta una contraproposicion sobre el mismo asunto, que entrega al Secretario de la Comision espanola, quien a su vez la pone en manos del Secretario de la Comision americana.

Los Comisarios americanos deseando que fuese inmediatamente traducida dicha contraproposicion, fue leida en ingles por su Interprete y anadida en calidad de anexo al presente protocolo.

El Presidente de la Comision americana manifiesta que entiende que de la lectura del anterior documento se desprende ser rechazada la proposicion de la Comision americana, y que segun el reglamento tiene esta el derecho de presentar un Memorandum escrito en apoyo de aquella; que en vista de ello y a fin de que pudiera ser traducido cuidadosamente y examinado el documento presentado, los Comisarios americanos deseaban aplazar la conferencia hasta el martes 8 de Noviembre a las 2 p. m.

Los Comisarios espanoles asienten al aplazamiento, pero anaden que el documento por ellos presentado ademas de rechazar la proposicion americana contiene una contraproposicion y que por tanto entienden que asimismo tendrian el derecho de presentar un Memorandum por escrito en apoyo de su contraproposicion, si esta fuese rechazada por los Comisarios americanos.

Siendo esto acordado por los Comisarios, se aplaza la conferencia hasta el dia y hora anteriormente citados.

Firmado: E. MONTERO RIOS,
B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

COMISION

Para La Negociacion de la Paz Con Los Estados Unidos.

PROPOSICION.

La Comision espanola ha elido con viva sorpresa la proposicion que la americana ha presentado en la sesion del 31 del ultimo mes de Octubre.

El unico articulo que en ella se contiene esta reducido a que Espana ceda a los Estados Unidos el archipelago conocido por Islas Filipinas, situado en el perimetro alli geograficamente determinado.

Contiene ademas dicha proposicion, aunque no para que formen parte del articulo, dos parrafos de los cuales el segundo es de una importancia tal, que exige que la Comision espanola haya de ocuparse en este escrito especialmente de su contenido.

Los Comisarios espanoles acaban de decir que les ha causado viva sorpresa esta proposicion, y es de su deber exponer las razones que tal sentimiento explican.

Desde la primera conferencia hasta la ultima, los Senores Comisarios americanos sostuvieron constantemente, y alegaron como principal fundamento de los proyectos sobre Cuba y Puerto Rico, que en estas conferencias, ambas Comisiones tenian que atenerse a las bases establecidas en los preliminares de paz que habian sido convenidos y firmados el 12 de Agosto ultimo. Lo mismo decian y continuan diciendo los Comisarios espanoles. La unica diferencia entre los unos y los otros consistio en, que los americanos sostenian que aquel documento habia de ser entendido estrictamente en su sentido literal, sin querer tomar en consideracion para fijar este sentido ningun otro dato, antecedente ni documento. Y como en el Protocolo no se habia escrito la frase "Deuda de Cuba o de Puerto Rico," entendian que por esta razon Espana debia transmitir o ceder su soberania sobre aquellas Islas, quedandose con sus obligaciones. Los Comisarios espanoles, por la inversa, entendian que el sentido literal del Protocolo debia fijarse teniendo presentes no solo las reglas generales del Derecho Internacional sobre interpretacion de los tratados, sino tambien las negociaciones en que ambas partes lo habian preparado y en que de antemano lo habian oficialmente interpretado.

Pues bien, la proposicion pretendiendo la cesion por Espana de las Islas Filipinas a los Estados Unidos, no solamente no cabe dentro de los articulos del Protocolo, sino que esta en notoria contradiccion con el, y es, en opinion de la Comision espanola, su flagrante infraccion.

Contiene aquel convenio seis articulos y de ellos solamente el tercero se refiere al Archipelago Filipino. Dice asi literalmente traducido del texto oficial frances:

"Los Estados Unidos ocuparan y tendran la ciudad, la bahia y el puerto de Manila, esperando la conclusion de un tratado de paz que debiera determinar la inspeccion (control), la disposicion y el gobierno de las Filipinas." Esto es lo unico que hay en el Protocolo sobre el archipelago.

Aunque la Comision espanola adoptase para la interpretacion de este articulo, el estrecho criterio del sentido literal que la americana sostiene (por estrano que sea este sostenimiento) que debe aplicarse, no se podria decir otra cosa sino que en aquella disposicion se acordo la ocupacion meramente temporal o provisional de Manila y su puerto y bahia por los Estados Unidos hasta que se hiciese el tratado de paz en que se habia de determinar o convenir sobre la inspeccion, la disposicion y el gobierno de Filipinas.

Que tiene esto que ver con un cambio o cesion de soberania?

La primera parte del articulo es completamente clara. No ofrece la menor duda de que alli lo unico que se consigno sobre Manila, su bahia y puerto, fue su ocupacion, no definitiva, sino provisional, por los Estados Unidos, ocupacion que no habia de durar mas que hasta la celebracion del tratado de paz. No necesita el sentido literal del texto comprobacion alguna. Mas si la necesitara, pueden los Senores Comisarios americanos registrar el numero 19 del Libro amarillo que acaba de publicar el Gobierno de la Republica francesa. Dicho numero contiene la circular que a los tres dias de firmado el Protocol, dirigió el Senor Ministro de negocios extranjeros de Francia a sus Embajadores en Europa, dandoles cuenta de la mision a que el Gobierno de la Republica se habia prestado que desempeñara su Embajador en Washington para ofrecer la paz al Gobierno de los Estados Unidos en nombre del de Su Majestad Catolica. Y en esta circular dice el Senor Ministro que su Embajador en aquella capital habia firmado en nombre de Espana, y a su ruego, un Protocolo que contenia las exigencias de los Estados Unidos para la paz. Enumera el Senor Ministro tales exigencias y respecto a Filipinas consigna, como la unica que contenia aquel documento, la ocupacion provisional de Manila por las fuerzas americanas.

Los Senores Comisarios americanos no desconoceran la incontrastable fuerza moral del testimonio del Senor Ministro de la Republica francesa, amiga por igual de los dos Estados beligerantes, y cuyo Senor Ministro no podia saber el contenido del Protocolo, sino por el autorizadísimo conducto de su Embajador, que lo habia discutido, convenido y firmado en nombre de Espana con el Gobierno americano.

El caracter meramente provisional de tal ocupacion subsistia aun despues de firmado el Protocolo, cuando, contra lo convenido en su artículo 60, el General Merritt se apodero de la plaza por la fuerza. En el ultimo parrafo del numero 5 de las reglas convenidas para la capitulacion y que fueron firmadas en 14 de Agosto en nombre del Ejercito americano por el Brigadier General de voluntarios Mr. F. V. Greene, por el Capitan de la marina americana Mr. Lamberton, por el Teniente Coronel e Inspector General Mr. Whittier y por el Teniente Coronel y Juez Abogado Mr. Crowder, se lee lo siguiente: "La devolucion de las armas depositadas por las fuerzas espanolas tendra lugar cuando se evacue la plaza por las mismas o por el Ejercito americano."

Entendian, pues, los que esto firmaban que las fuerzas americanas no ocupaban definitivamente la plaza porque suponian que podia llegar el caso de que hubiesen de evacuarla. Y si suponian esto, claro es que entendian que era meramente provisional la ocupacion.

Es verdad: las frases "inspeccion, disposicion y gobierno de las Filipinas" no tiene un sentido claro. El Gobierno espanol y su representante en Washington ya lo hicieron notar reclamando su explicacion al Gobierno americano (que no la dio) antes de firmarse el Protocolo. Pero cualquiera que sea la que ahora intente dar, no puede llegarse, en ningun caso, a pretender que tales frases encierran el pensamiento de la cesion de la soberania de Espana en el archipiélago. Esta cesion, alli convenida, o sea la adquisicion a perpetuidad del archipiélago por los Estados Unidos, estaria en contradiccion con la ocupacion exclusivamente temporal de Manila, tambien alli acordada, ya que esta expresamente consignada en el mismo parrafo. No podrian nunca tampoco admitirse con arreglo a las maximas de interpretacion de los tratados, porque tal supuesta cesion seria un beneficio a favor de quienes se negaron a aclarar, sin alegar para ello razon alguna valedera, cuando oportunamente se les pidio, el concepto que ya entonces aparecia ambiguo e indeterminado de tales frases; y porque, aun sin tal razon, habria lugar a palicar a los Senores Comisarios americanos, con el fundamento que ellos no tuvieron para aplicarla a los espanoles (segun estos entienden), la razon que consignaron en su ultimo Memorandum, y segun la cual, "la abstencion de Espana de proponer en el Protocolo la condicion del trasaso de la deuda, la incapacitaba para proponerla ahora." Los Estados Unidos se abstuvieron de proponer a Espana en el Protocolo, franca y abiertamente, como franca y abiertamente debe consignarse todo en los tratados, que siempre se otorgan para ser entendidos y cumplidos de buena fe, la cesion de su soberania en el archipiélago. No lo hicieron, y por eso estan incapacitados de proponerla ahora.

Cuanto precede realmente sobra, porque existe la prueba, irrefutable para los Senores Comisarios americanos, de que al firmarse el Protocolo de Washington el dignísimo Senor Presidente de la Union no solo no abrigaba el pensamiento de que Espana hubiese de ceder el Archipiélago Filipino a los Estados Unidos, sino que abrigaba el pensamiento contrario, o sea el de que Espana habra de conservar alli su soberania.

En la conferencia que el Embajador de Francia Senor Cambon tuvo en 4 de agosto ultimo con Mr. McKinley, a presencia de su Secretario de Estado, haciendole observaciones sobre la cesion de la Isla de Puerto Rico en compensacion de los gastos de la guerra, el Senor Presidente le contesto mostrandose inflexible en este punto, y le repitió que la cuestion de Filipinas era la unico que no estaba ya definitivamente resuelta en su pensamiento. Con tal motivo el Senor Cambon le pidio explicaciones sobre el sentido de las sobredichas frases de la clausula, 3 relativa al Archipiélago Filipino, porque aparecia redactada en terminos que podian prestarse a los temores de Espana respecto a su soberania en aquellas islas. El Senor Presidente le contesto las siguientes textuales palabras: "No quiero dejar subsistir ningun equivoco sobre este particular. Los negociadores de los dos paises seran los que resuelvan cuales sean las ventajas permanentes" (fíjese la atencion en la frase: no "derechos") "que pediremos en el archipiélago, y en fin los que decidan la intervencion (controle), disposicion y gobierno de Filipinas" y agrego "El Gobierno de Madrid puede tener la seguridad de que, hasta ahora no hay nada resuelto, a priori, en mi pensamiento contra Espana, asi como considero que no hay nada decidido contra los Estados Unidos." Gabe en lo posible que nadie dude de que el 12 de Agosto el Senor Presidente de los Estados Unidos al firmar su Secretario de Estado el Protocolo, no tenia el pensamiento de exigir a Espana la cesion de su soberania en el archipiélago para los Estados Unidos?

Pero hay mas: no solo no tenia ese proposito, sino que sus frases demuestran que tenia el de que Espana habia de conservar aquella soberania. Segun el los Comisionados en Paris habian de acordar las ventajas permanentes que los Estados

Unidos pedirían en el archipiélago. Pues si España no hubiera de conservar su soberanía, que ventajas para el porvenir era posible que pidieran los Comisionados de los Estados Unidos a España y que esta había de poder concederles? Si los Estados Unidos se habían de quedar con la soberanía, como se explica que sus Comisionados en París hubieran de pedir a España ventajas en un archipiélago que al mismo tiempo habían de reclamar y recibir como suyo?

Mas aun hay otra prueba, tan irrefutable como la anterior, de que el Gobierno de Washington no solamente entonces estaba ageno a todo pensamiento y proposito sobre la soberanía del Archipiélago Filipino, sino que consintió que esta hubiera de continuar en España, excluyendo en su propio pensamiento toda mudanza sobre este punto al redactar primero y al firmar despues la clausula 3 del Protocolo.

Contestando al Gobierno de España, por su despacho de 7 de Agosto, el Honorable Senor Secretario de Estado en Washington, que le habia hecho saber en el suyo del 31 de Julio las condiciones, tales como aparecen redactadas e incluidas en el Protocolo, bajo las cuales el Gobierno americano estaba dispuesto a poner termino a la guerra, le decia el Ministro espanol sobre la base 3 lo que sigue:

"La base referente a las Islas Filipinas parece a nuestra inteligencia demasiado indeterminada. En primer termino el titulo invocado por los Estados Unidos para la ocupacion de la bahia, puerto y ciudad de Manila, esperando la conclusion de un tratado de paz, no puede ser el de conquista, porque la ciudad de Manila se defiende aun: a pesar del bloqueo por mar y el asedio por tierra, aquel por la flota americana, y este por las fuerzas que acandilla un indigena alentado y pertrechado por el Almirante, la bandera espanola no ha sido arriada. En segundo lugar el Archipiélago Filipino se halla intacto en poder y bajo la soberanía de España. Entiende pues el Gobierno espanol que la ocupacion temporal de Manila habra de constituir una garantia. Dicese que en el tratado de paz se determinara la intervencion, la disposicion y el gobierno de Filipinas, y como la intencion del Gobierno federal queda por demas velada en esta clausula interesa a este Gobierno consignar que aceptando la base tercera no renuncia a priori a la soberanía total del Archipiélago Filipino, dejando a los negociadores el cuidado de estipular acerca de las reformas aconsejables por la situacion de aquellas posesiones y el nivel de cultura de sus naturales. El Gobierno de Su Majestad acepta la base 3: acompañada por la declaracion supradicha."

Bien claro aparece que el Gobierno espanol no acepto la unica base que en el Protocolo hay sobre Filipinas, sino en cuanto en ella se quisiera decir que Manila no habia de ser mas que temporalmente ocupada, como garantia, y que la intervencion, la disposicion y el gobierno de que en la base se hablaba, tendrian por unico objeto el regimen y gobierno interior de aquellas islas, pero no su soberanía total que España expresamente se reservaba y habia de conservar.

Contra esta interpretacion dada de antemano por el Gobierno de Su Majestad Catolica a la base tercera del Protocolo, y en cuyo unico sentido la aceptaba, nada dijo, nada indico el Gobierno de Washington antes de firmarlo. Por la inversa el Senor Secretario de Estado al remitir al Senor Embajador de Francia la minuta del Protocolo que habia de firmarse le decia en una carta, que la nota del Gobierno espanol (que era la en que se hallaban las frases anteriormente transcritas) contenia en su espiritu la aceptacion por España de las condiciones propuestas por los Estados Unidos. Por consiguiente la condicion tercera habia sido redactada por el Gobierno americano en el mismo sentido en que la entendia el Gobierno espanol, porque no podia decir, en otro caso, el Senor Secretario de Estado, con vista de la nota en que constaba el unico sentido aceptable para el Gobierno espanol, que este la aceptaba.

Asi pues; los Estados Unidos podran reclamar hoy tal soberanía, mas para esta reclamacion no pueden fundarse en el Protocolo.

Y que otro titulo que no sea este pueden alegar contra la voluntad de España?

En el Protocolo se fijaron las bases que los Estados Unidos exigian a España para la paz, o lo que es lo mismo todas las condiciones que los Estados Unidos imponian a España para que pudiera aquella restablecerse entre los dos paises. A la vez se acordo alli la inmediata suspension de las hostilidades, suspension que por parte de España fue religiosamente observada hasta el presente. Por lo tanto los Estados Unidos no pueden ni tienen derecho para exigir hoy a España mas condiciones onerosas, que las contenidas en el Protocolo, por causas anteriores a su fecha, una vez que entonces no impusieron mas que las que alli estan escritas, dandose con su aceptacion por satisfechos; ni por causas posteriores ya que desde entonces España no ejecuto acto alguno de agresion ni dio motivo a nuevas exigencias ni reclamaciones de los Estados Unidos.

Si por motivos que no estan en la esfera de la competencia de la Comision espanola, el Gobierno americano desea ahora adquirir la soberanía del Archipiélago Filipino, no es ciertamente el medio adecuado para el logro de su proposito una reclamacion hecha al amparo de los preliminares de paz convenidos en el Protocolo firmado en Washington en 12 de Agosto por ambas Altas Partes.

Los Comisarios españoles indicaron al principio de este escrito que el 20 párrafo que despues del proyectado artículo contenia la proposicion americana era de tal importancia que les imponia la necesidad de ocuparse especialmente de su contenido.

Dichos Senores Comisarios manifiestan en el que estan dispuestos a insertar en el tratado una estipulacion por la que asuman los Estados Unidos cualquiera deuda de Espana contraida para obras publicas o mejoras de caracter pacífico en Filipinas.

El Archipiélago esta efectivamente gravado con una deuda de 200 millones de pesetas, garantizada con la hipoteca de los productos y redimientos de la Aduana de Manila; y pesan ademas sobre la Corona obligaciones, cargas de justicia y otras pensiones de menor importancia, del servicio exclusivo de aquella colonia.

Por lo que hace a la deuda hipotecaria, ya han consignado los Comisarios españoles con ocasion de la deuda de la misma clase que pesa hipotecariamente sobre la renta de las Aduanas y sobre todos los impuestos, directos o indirectos de la Isla de Cuba, que no queden siquiera admitir discusion acerca del valor y eficacia de tales hipotecas.

Constituidas legalmente por un Soberano legítimo y legitimamente adquiridas por los particulares de diversas nacionalidades que se interesaron en aquellas operaciones de credito, Espana no es dueña de los derechos de estas terceras personas que estan al amparo de las leyes que protegen la propiedad privada, para que en un tratado con los Estados Unidos ni con otra Potencia alguna, pueda consentir en nada que signifique o implique una lesion de derechos que no son suyos. Se lo vedan los deberes mas elementales de la probidad publica y privada.

Espana no reclama el reconocimiento de esas deudas hipotecarias para su propio beneficio, questo que su tesoro no se ha obligado a pagar tales deudas sino subsidiariamente, esto es, solamente en el caso en que no fueran suficientes las rentas e impuestos hipotecados. Si hace tal reclamacion es solamente en cumplimiento de un deber moral que pesa sobre todo deudor honrado, y ademas en beneficio de los tenedores de su deuda propia, los cuales no podian menos de ver un peligro para sus intereses en el hecho de que Espana, sin estar a ello obligada, recargase las obligaciones de su tesoro con otras cuantiosas a que hubiera de atender juntamente que a las suyas propias y corriendo el peligro de que sus recursos no bastasen para atender a todas. La deuda y obligaciones de las colonias que a ella directamente interesan son las que no gozan del privilegio de una hipoteca, porque respecto a ellas esta principalmente obligada al pago, y entiende que no es justo que cuando las ha contraido por y para sus colonias, haya de continuar despues de perderlas, gravada con tales cargas, que son, despues de todo, una pequena parte del inmenso capital que en aquellas se invirtio y que ha cubierto con sus propios recursos.

Quede dicho, por lo tanto, y esperan los Comisarios españoles que no habran de tener la necesidad de repetirlo, que Espana no puede ni debe, porque el respeto a lo ajeno se lo veda, convenir en este tratado, ni en ninguno, sobre nada que implique la lesion o la suspension o siquiera desconocimiento de derechos privados y ajenos contra la voluntad de sus legítimos y particulares dueños.

Mas aun por lo que toca a la deuda colonial no privilegiada, su dignidad y el respeto que se debe a si misma, le vedan igualmente admitir las bases que resaltan en el párrafo de la proposicion de que se esta ocupando y que consiste en el examen de la inversion que Espana haya podido dar a los productos obtenidos por la creacion de dichas deudas. Esto equivalla a someter al criterio de una potencia extrana los actos de su gobierno interior. Acertados o no (acertados entiende que han sido todos) fueron perfectamente legítimos y estan al amparo de su soberania.

Y aun en la inadmisibie hipotesis de que tal acierto no hubiera habido en ellos, no saben los Comisarios españoles que haya nadie que pueda pacer depender la legitimidad de una deuda legalmente contraida, de la inversion buena o mala, que, despues de constituida, haya dado el deudor a sus productos.

No han de poner termino los Comisarios españoles a este escrito sin llamar la atencion de los honorables Comisarios americanos sobre un punto que no puede menos de ser resuelto en el tratado, en cumplimiento de lo convenido en la base 6a del Protocolo: dice esta así: "Una vez terminado y firmado este Protocolo, deberan suspenderse las hostilidades en los dos paises, y a este efecto se deberan dar ordenes por cada uno de los dos Gobiernos a los Jefes de sus fuerzas de mar y tierra, tan pronto como sea posible."

Ya antes de la firma del Protocolo, al Senor Presidente de la Union, despues de enterar al Senor Embajador de Francia el dia 30 de Julio ultimo, de las condiciones que los Estados Unidos imponian a Espana para restablecer con ella la paz, le manifesto que consentia en conceder la suspension de hostilidades en seguida que el Senor Ministro de Estado espanol hiciera saber al Embajador de Francia, su representante en Washington, que aceptaba las negociaciones sobre las bases indicadas por el Gobierno federal, y que autorizaba a dicho Embajador para firmar en su nombre el acta preliminar que ponía termino a las hostilidades.

El Gobierno espanol manifesto su conformidad con tales bases, y autorizo al Embajador de Francia para aceptarlas y firmarlas en su nombre, por su despacho

de 7 de Agosto, que fue inmediatamente comunicado al Gobierno de Washington. Apesar de esto, las hostilidades no se suspendieron entonces. Mas al fin se acordo su suspension pocos dias despues, o sea el 12, por el mencionado artículo 6 del Protocolo.

Esto no obstante el día 13, el General Merritt, Jefe de las fuerzas americanas en Manila, y el Almirante de la flota en aquella bahia, exigieron la rendicion de la plaza, y por no prestarse a ella sus autoridades, rompieron el fuego dichas fuerzas contra el polvorin de San Antonio Abad, y contra las trincheras que defendian la ciudad del lado de tierra, causando innecesariamente un numero considerable de bajas a las fuerzas espanolas, que hubieran entregado pacíficamente la ciudad a los americanos, en cumplimiento de la base 3 del Protocolo, para que la conservasen en garantía hasta la celebracion del tratado de paz.

El General Merritt entro por la fuerza en Manila, hizo prisionera de guerra su guarnicion compuesta de 8 a 9,000 hombres, se apodero de los fondos publicos y de la recaudacion de los impuestos, incluso los de Aduanas, nombro Intendente General y Administrador de la Hacienda publica y recolector de dichos impuestos a los oficiales de su ejercito que tuvo por conveniente, destituyendo por esto a los funcionarios espanoles; relevo al Comandante espanol de la guardia civil encargada del orden publico; constituyo tribunales militares; abrio el puerto de Manila, y todos los demas, de Filipinas que se hallaban en posesion de sus fuerzas de mar y tierra, al comercio de su nacion y al de los neutrales, previo el pago de los derechos que rigiesen al tiempo de su introduccion y que sus funcionarios percibieron. Todo esto consta en el acta preliminar de capitulacion del 13 de Agosto, en la capitulacion misma del 14, en el bando del General Merritt de igual fecha, en sus ordenes de 22 y 23 del propio mes, y en las demas dictadas por las autoridades y funcionarios americanos en Manila.

El Gobierno espanol reclamo al de Washington, contra todo lo alli ocurrido, por conducto de la Embajada francesa, en 29 de Agosto, 3 y 11 de Septiembre ultimo, insistiendo despues hasta el presente en las mismas reclamaciones, y señaladamente en la inmediata libertad de la guarnicion prisionera en Manila y en la devolucion de sus armas, questo que por una parte no podia enviar refuerzos desde la Peninsula al archipiélago, cuyo envio tampoco velan con buenos ojos los Estados Unidos, y por la otra, necesitaba aquellas fuerzas para libertar a millares de espanoles prisioneros de los insurrectos tagalos y victimas de sus malos tratamientos, y para combatir y dominar aquella insurreccion de sus propios subditos. Las reclamaciones del Gobierno espanol fueron hasta ahora inutilles. Estos hechos continuan cada dia tomando peor aspecto. El 21 de Septiembre el Capitan W. P. Moffatt, nombrado por el Prevoste Gobernador americano, encargado de las prisiones de la plaza de Bilibid, con facultad de disponer la entrada y libertad de toda clase de presos, se la dio a dos llamados Silvestre Lacoy y Marcos Alarcon, que estaban procesados por el delito de robo en cuadrilla, a otros dos que lo estaban por desercion, a seis que lo estaban por desacato, a otro que lo estaba por asalto y robo y a otros tres que lo estaban por homicidio. Como se ve, todos estos presos estaban en la carcel por delitos comunes. Este hecho inaudito fue comunicado al Gobierno de Su Majestad Catolica por la Comandancia General del Apostadero de Manila.

Ahora bien, se hace preciso examinar todos estos hechos desde el punto de visto de su legalidad y con relacion a lo que en la clausula 6 del Protocolo se habia convenido, y constitula una formal obligacion para ambos Gobiernos.

Desde cuando debio comenzar a producir sus efectos la suspension de las hostilidades acordada en dicha clausula 6? La contestacion no es dudosa. El texto es claro y explicito: las hostilidades habian de suspenderse desde la conclusion y firma del Protocolo.

Esto ocurrio en la tarde del 12 de Agosto. Por lo tanto, desde dicha tarde los actos de guerra que cualquiera de los beligerantes ejecutara, habian de tenerse como no hechos para el efecto de restablecer el "statu quo ante" el momento de la firma del Protocolo.

Es ocioso y hasta seria ofensivo para la alta ilustracion de la Comision americana exponer aqui la doctrina, no solo admitida desde los tiempos de Grotius sin contradiccion en el Derecho y en las practicas internacionales, y a que prestan su asentimiento y su apoyo todos los ilustres tratadistas anglo-americanos que de la materia se han ocupado, sino que ademas esta elevada en los Estados Unidos a la categoria de Derecho establecido, en el artículo 140 de sus Instrucciones para los Ejercitos en campana, que dice asi: "El armisticio liga a los beligerantes a partir del dia convenido entre ellos para su ejecucion, pero los oficiales de los dos ejercitos no son responsables de esta ejecucion, mas que desde el dia en que el armisticio les ha sido oficialmente notificado."

El día de la ejecucion fijado en el artículo seis del Protocolo fue el en que se concluyese y firmase: asi textualmente se dice alli: "A la conclusion y firma de este Protocolo las hostilidades entre los dos paises deberan ser suspendidas."

El General Merritt y el Almirante de la escuadra no seran personalmente responsables de la sangre que innecesariamente derramaron el día 13, si entonces no tenian noticia oficial del Protocolo que se habia firmado el día anterior en Wash-

ington, pero esto no obsta para que, como dice uno de los mas ilustres tratadistas del Derecho Internacional, el honor militar exige abstenerse escrupulosamente de aprovecharse de toda ventaja que podria sacarse de la ignorancia de las tropas que no hubieran sido todavia informadas del armisticio. En casos como este la Potencia beligerante cuyas fuerzas, por ignorancia, ejecutaron un acto de guerra, no puede aprovecharse de sus ventajas y debe reponer las cosas el "statu quo ante" indemnizando al beligerante perjudicado de los danos y perjuicios que por aquel acto de guerra se le hubieran inferido, y restituyendo, como dice el ilustre publicista anglo-americano Dudley Field, todas las presas hechas en contravencion del armisticio.

Esto es tan elemental y vulgar en los Estados Unidos, que en sus colegios sirve de texto la obra titulada "Elementos de Derecho Internacional y Leyes de Guerra" escrita por el Mayor General Halleck y en cuya edicion de Filadelfia, pagina 283, se lee lo siguiente:

"La tregua liga a las partes contratantes desde el momento de su conclusion a menos que no se estipule especialmente otra cosa, pero no liga a los individuos de una nacion hasta el punto de hacerles personalmente responsables de su ruptura mientras no tengun noticia actual y positiva de ella.

"Por consiguiente, si los individuos sin conocimiento de la suspension de hostilidades, malan un enemigo o destruyen su propiedad, no cometen por tales actos un crimen ni estan obligados a indemnizacion pecuniaria, pero si hacen prisioneros o presos, el soberano esta en la obligacion de poner a aquellos inmediatamente en libertad y de restituir las presas."

El Gobierno americano no ha puesto, hasta ahora, en libertad a la guarnicion prisionera de Manila, ni ha reducido su ocupacion belica de la plaza a los limites de un simple derecho de guarnicion en ella, que es, segun el articulo 30 del Protocolo, lo unico a que tienen derecho como garantia hasta el tratado de paz.

Las Comisionadas espanoles, por lo tanto, en cumplimiento de lo expresamente convenido en el Protocolo, entienden que en el tratado de paz debe consignarse:

1. La entrega inmediata de la plaza al Gobierno espanol.
2. La libertad inmediata de la guarnicion de la misma.
3. La devolucion al Gobierno espanol de todas las fondos y propiedades publicas de que se todas clases que ha venido percibiendo y que perciba hasta su devolucion; y
4. El compromiso por parte de los Estados Unidos de indemnizar a Espana de los gravisimos perjuicios que le ha ocasionado con la retencion de aquellas tropas prisioneras, porque a esto fue debido que impunemente se propagase la insurreccion tagala en la Isla de Luzon y su invasion en las Islas Visayas, y porque tambien a esto mismo ha sido debida la continuacion de los malos tratamientos de los millares de prisioneros espanoles civiles y militares a que impunemente continuan sometiendo las fuerzas insurrectas tagalas.

En virtud de cuanto precede la Comision espanola tiene el honor de hacer a la Comision americana la siguiente proposicion:

Primero. Que no puede aceptar la proposicion que ha presentado pidiendo la cesion de la soberania del Archipelago Filipino a los Estados Unidos por entender que es contraria a los preliminares de paz convenidos en el Protocolo de Washington; y

Segundo. Que en su consecuencia la invita a que, de acuerdo con lo convenido en los mencionados articulos 3 y 6 del Protocolo, se sirva presentar una proposicion sobre la intervencion, disposicion y gobierno del Archipelago Filipino y sobre el compromiso que, segun lo que se acaba de decir, deben contraer los Estados Unidos por efecto del hecho de guerra efectuado por sus tropas despues de firmado el Protocolo, apoderandose a viva fuerza de la ciudad de Manila y ejecutando los actos que estan fuera de los umius derechos que los Estados Unidos podian ejercer en aquella ciudad y su bahia y puerto, con arreglo a la convenido en la mencionada base 3 del Protocolo.

Esta conforme:

EMILIO DE OJEDA.

ANNEX TO PROTOCOL NO. 12.

PROPOSITION.

The Spanish Commission has read with great surprise the proposition presented by the American Commission at the meeting held on the 31st of October, ultimo.

The only article which said proposition contains is reduced to providing for the cession by Spain to the United States of the archipelago known as the Philippine Islands, situated within the perimeter geographically determined in its text.

But in addition thereto the proposition contains two paragraphs, not intended to form a part of the article, the second of which is of such importance as to demand from the Spanish Commission to deal with it specially in this paper.

The Spanish Commissioners have stated that the American proposition excited in them great surprise, and it is their duty to set forth the reasons which explain that feeling.

From the first to the last conference, the American Commissioners have been alleging constantly—and that allegation was the principal ground upon which their drafts relating to Cuba and Porto Rico were based—that in their conferences the two Commissions have to abide by the bases established in the preliminaries of peace agreed upon and signed on the 12th of August ultimo. The same was said and continues to be said by the Spanish Commissioners. One difference, however, has existed in this respect between the two Commissions, and this has been that the American Commissioners understand that the Protocol should be construed according to its letter, strictly, and without taking into consideration any data, antecedent or document. For this reason, as the words "Debt of Cuba, or of Porto Rico" were not written on the Protocol, they have deemed that Spain should transmit or cede her sovereignty over the Islands, but should retain the latter's obligations. The Spanish Commissioners understand, on the contrary, that for determining the literal meaning of the Protocol it is necessary not only to bear in mind the general rules of international law as to the interpretation of treaties, but also the negotiations carried on between the two parties which culminated in this agreement, and in which the interpretation of the latter had been given beforehand and officially.

Therefore the proposition relating to the cession by Spain to the United States of the Philippine Islands, besides not being included in or covered by the articles of the Protocol, appears to be in open contradiction of its terms. In the opinion of the Spanish Commission it is a flagrant violation of the agreement.

The Protocol contains six articles, and only one, the third, refers to the Philippine Archipelago. Literally translated (into Spanish) from the official French text, it reads as follows:

"The United States shall occupy and hold the city, the bay and the harbor of Manila pending the conclusion of a treaty of peace which shall determine the inspection (controle), the disposition, and the government of the Philippine Islands."

This is all that the Protocol says about the archipelago.

Even accepting as a proper standard for the interpretation of this article the narrow one of the literal meaning, as claimed (no matter how strange it may appear) by the American Commission, the Spanish Commission would have only to reply that the text of the Protocol refers to nothing else than the temporary or provisional occupation by the United States of Manila, its harbor, and its bay, until the treaty of peace, determining or agreeing upon the inspection, disposition and government of the Philippine Islands, should be concluded.

What has this to do with any change or cession of sovereignty?

The first part of the article is perfectly clear. Not even the slightest doubt can exist as to the fact that the only agreement as to Manila, its bay and its harbor, referred to the occupation thereof, not final but provisional, by the United States; said occupation to last only until the conclusion of the treaty of peace. No proof is necessary to corroborate this literal construction of the text. But should it be required, the American Commission would find it in document number 19 in the Yellow Book just published by the Government of the French Republic. Said document contains the circular addressed by the French Minister of Foreign Affairs to the French Ambassadors in Europe, three days after the signing of the Protocol, acquainting them with the mission which the Government of the Republic had allowed to be entrusted to the French Ambassador at Washington, to offer peace to the Government of the United States in behalf of the Government of Her Catholic Majesty. This circular states that the French Ambassador at Washington had signed, in the name of Spain and at her request, a Protocol setting forth the demands of the United States, and after enumerating those demands, and in referring to the Philippine Islands, the French Minister of Foreign Affairs says that the only one con-

tained in that document was the provisional occupation of Manila by the American forces.

The American Commission will not disregard the unquestionable moral weight of the testimony of the Minister of Foreign Affairs of the French Republic, equally friendly to the two belligerent states, who could know nothing about the Protocol except through the most authoritative channel of the French Ambassador who had discussed it with the American Government, and agreed to it and signed it, in the name of Spain.

The mere provisional character of that occupation remained even after the Protocol was signed, when General Merritt, contrary to what had been agreed upon in Article VI. of the same, forcibly took possession of Manila. In the last paragraph of No. 5 in the rules for capitulation agreed upon and signed on August 15, on the part of the United States, by Brigadier-General of Volunteers E. V. Greene, by Captain Lamberton of the United States Navy; by Lieutenant-Colonel and Inspector-General Whittier, and by Lieutenant-Colonel Judge-Advocate Crowder, the following was said:

"The return of the arms surrendered by the Spanish forces shall take place when they evacuate the city or when the American army evacuates."

Therefore it was understood by those who signed this agreement that the American forces did not permanently occupy the place, as they anticipated the case that they would have to evacuate it. And if they anticipated this, it is clear that they understood their occupation of the place to be merely provisional.

True, it is, that the words "inspection, disposition and government of the Philippine Islands" have not a clear meaning. The Spanish Government and its representative at Washington had noticed this fact and asked for the proper explanation thereof (which was not given) by the American Government, before the Protocol was signed. But whatever construction may now be placed upon these words, the fact is that in no case can their meaning be so stretched as to involve in any way the idea of cession of the sovereignty of Spain over the archipelago. Such a cession or acquisition in perpetuum of the archipelago by the United States, had it been agreed upon in the Protocol, would have been in contradiction with the mere temporary occupation of Manila, which at the same time was agreed upon in the same clause of that instrument.

Nor could the said construction ever be admitted as valid, under the rules of interpretation of treaties, because the said admission would result in benefiting a party who refused to explain, when asked at the proper time to do so, the meaning of the words which even then were considered ambiguous and indeterminate. Even if this were not the case, the rule which the Spanish Commission understand to have been applied to them without reason, set forth by the American Commissioners in their last "memorandum," namely, that "the abstention of Spain from proposing in the Protocol the condition of the transfer of the debt precluded her from proposing it now," would be applicable to the case. The United States abstained from proposing to Spain in the Protocol, frankly and openly, as frankly and openly as all things must be set forth in all treaties, which must never be concluded unless to be understood and complied with in good faith, the cession of her sovereignty over the archipelago. They did not do it, and they became thereby precluded from proposing it now.

All the foregoing statements must really be considered in excess of necessity, as it is a fact, perfectly well known to the American Commissioners, that when the Protocol was signed at Washington the most worthy President of the Union not only had no idea that Spain would have to cede the Philippine Archipelago to the United States, but entertained, on the contrary, an opposite idea, namely, that Spain would retain her sovereignty over it.

In the conference held on August 4 last, between Mr. Cambon, Ambassador from France, and President McKinley, in the presence of the United States Secretary of State, Mr. Cambon made some remarks as to the cession of Porto Rico in compensation for the expenses of the war, and the President, showing himself inflexible upon that point, repeated his assertion that the Philippine question was the only one not finally settled in his mind. It was then that Mr. Cambon asked for an explanation about the meaning of the above cited phrases in Article III. of the Protocol, relating to the Philippine Archipelago, as the language of said article might lend itself to inspire fear in Spain in regard to her sovereignty over these islands. President McKinley answered him, verbatim, as follows:

"I do not want any ambiguity to be allowed to remain on this point. The negotiators of both countries are the ones who shall resolve upon the permanent advantages (notice that he said 'advantages' and not 'rights') which we shall ask in the archipelago, and decide upon the intervention (control), disposition and government of the Philippine Islands."

He further said: "The Madrid Government can rest assured that up to now nothing is decided a priori, in my own mind, against Spain, nor do I consider anything decided by it against the United States."

Is it therefore doubtful that on the 12th of August, when the Secretary of State

of the United States signed the Protocol, the President of the United States had no idea of demanding from Spain the cession to the United States of her sovereignty over the archipelago?

But there is something more. The President of the United States, far from entertaining that purpose, clearly showed by his language that he desired that Spain should preserve her sovereignty. He said that the Commissioners at Paris would have to come to an agreement as to the permanent advantages to be demanded by the United States in the Philippine Archipelago. If Spain was to be deprived of her sovereignty, what future advantages could possibly be asked from Spain by the United States Commissioners, or granted them by Spain? How would it be possible for the American Commissioners at Paris to ask Spain for advantages in an archipelago which they at the same time had to demand and receive as their own property?

There is still another proof, as irrefutable as the above, that the Washington Government, far from having at that time any idea or intention to acquire sovereignty over the Philippine Archipelago, consented that said sovereignty continue to be vested in Spain, by removing from its own mind all idea of change in this respect, either when framing or signing Article III. of the Protocol.

When the Spanish Government, by its dispatch of the 7th of August, answered the note of the Honorable Secretary of State of the United States of the 31st of July, wherein he informed Spain of the conditions, such as set forth in the Protocol, upon which the American Government was disposed to put an end to the war, the Spanish Secretary of State used in regard to basis 3 the following language:

"The basis relating to the Philippine Islands seems, according to our understanding, to be too indeterminate. In the first place, the title invoked by the United States for the occupation of the bay, harbor and city of Manila, pending the conclusion of a treaty of peace, cannot be conquest, as the city of Manila is still defending itself. In spite of the blockade by sea and the siege by land, the former by the American fleet, the latter by forces commanded by a native encouraged and assisted by the American Admiral, the Spanish flag has not been lowered. In the second place, the Philippine Archipelago is wholly in the power and under the sovereignty of Spain. The Spanish Government understands, therefore, that the temporary occupation of Manila must constitute a guarantee.

"The treaty of peace, it is said, shall determine the intervention, disposition and government of the Philippine Islands, and as the intention of the Federal Government is too much veiled in this clause, it is important for this Government to state that while accepting the 3d basis, it does not relinquish a priori the entire sovereignty over the Philippine Archipelago, and leaves to the negotiators the care to stipulate in regard to such reforms as it may be advisable to introduce there—in view of the situation of those possessions and the degree of cultivation of their inhabitants. The Government of Her Majesty accepts the 3d clause as supplemented by the aforesaid declaration."

It appears very plainly that the Spanish Government did not accept the only item of the Protocol which relates to the Philippine Islands, except in so far as it meant that the occupation of Manila should be only temporary and in the nature of a guarantee, and that the intervention, disposition and government spoken of in the item should refer to the interior regime and administration of the government of the said Islands, and not to the entire sovereignty, which Spain expressly reserved and was entitled to retain.

Against this construction placed beforehand by the Government of Her Catholic Majesty upon the 3d basis of the Protocol—a construction upon which exclusively it was accepted—the Washington Government said or suggested nothing, before signing the instrument. On the contrary, the Secretary of State of the United States, when sending to the French Ambassador the draft of the Protocol which was to be signed, said to him in a letter that the note of the Spanish Government (the one in which the above quoted phrases appear) contained in its spirit the acceptance by Spain of the conditions proposed by the United States. Therefore, the third condition had been framed by the American Government in the same sense in which it had been understood by the Spanish Government. Otherwise it would have been impossible for the Secretary of State of the United States to say, upon examination of the note in which the Spanish Government explained the only meaning of the article which would be acceptable to it, that the Spanish Government did accept it.

The result is that while the United States may now come and claim the said sovereignty, the claim can never be founded upon the Protocol.

And what other title, different from that agreement, can they allege, against the will of Spain, to be vested in them?

The bases upon which the United States agreed to make peace with Spain, or in other words, the conditions which the United States imposed upon Spain for the re-establishment of peace between the two countries, were set forth in the Protocol. An immediate suspension of hostilities was also agreed upon in that instrument; and Spain up to the present time has scrupulously kept the agreement. Therefore the United States can have no right to demand now from Spain any onerous conditions

not contained in the Protocol, either because of events prior to its date—since when the Protocol was signed the United States did not make more demands than are written therein, and were satisfied with their acceptance by Spain—or because of subsequent events, since Spain, after the instrument was signed, did not commit any aggression or give the United States any occasion to make further complaints or demands.

If for reasons which are beyond the sphere of jurisdiction of the Spanish Commission, the American Government wishes now to acquire sovereignty over the Philippine Archipelago, the proper way to accomplish that purpose is certainly not a claim based upon the preliminaries of peace agreed upon between the two High Contracting Parties and set forth in the Protocol signed at Washington on the 12th of August.

The Spanish Commissioners stated at the beginning of this paper that the second paragraph which the American proposition contained after the proposed article was of such importance that it imposed on them the necessity of dwelling especially upon its import.

The Commissioners assert therein that they are disposed to insert in the treaty a stipulation whereby the United States will assume any debt of Spain contracted for public works or improvements of a pacific character in the Philippines.

The archipelago is in fact burdened with a debt of 200 billions of pesetas, secured by mortgage on the proceeds and revenues of the Manila custom house; and there further rest upon the Crown obligations, just charges and other pensions of lesser importance, exclusively connected with the service of that colony.

With respect to the mortgage debt, the Spanish Commissioners have already stated with relation to the debt of a like nature which by way of mortgage burdens the revenues of the custom houses and all the taxes, direct and indirect, of the Island of Cuba, that they cannot even admit any discussion relative to the validity and efficacy of such mortgages.

Legally created by a legitimate sovereign, and legally acquired by the individuals of various nationalities who interested themselves in those provincial operations, Spain is not the proprietor of the rights of these third parties, who are under the aegis of the laws protecting private property, so as to consent in a treaty with the United States or any other power in any way to anything which means or implies an impairment of rights which are not hers. The most elemental duties of public and private probity forbid this.

Spain does not demand the recognition of these secured debts for her own benefit, since her treasury has not bound itself to pay the same, save subsidiarily, that is, only in the event that the revenues and taxes mortgaged are insufficient to meet them. If she makes the demand it is only in obedience to a moral duty resting upon every honest debtor, and, further, in behalf of the holders of her own debt, who could not but see a danger to their interests in the fact that Spain, without being bound thereto, should overburden her treasury with other heavy obligations for which it would be liable jointly with her own, and running the risk of her resources being insufficient to meet them all. The debt and obligations of the colonies which directly interest her are those not enjoying the privilege of security, because with respect to these she is primarily bound, and she understands that it is not just that when she has contracted them for her colonies she should continue, after losing them, burdened with such charges, which are, after all, a small part of the immense capital invested in those colonies which was furnished from her own resources.

Let it be understood, therefore, and the Spanish Commissioners hope there will be no necessity to repeat it, that Spain cannot and ought not, since respect for the rights of others forbids it, to agree in this treaty or in any to anything implying the impairment or suppression or even disregard of the private rights of others against the will of their legitimate and special proprietors.

Still more with respect to the unprivileged (unsecured) colonial debt, their dignity and the respect due to their own selves likewise forbid them accepting the bases which stand out in the paragraph of the proposition under consideration, which consists of the looking into the investment Spain may have made of the proceeds resulting from the creating of such debts. This would be equivalent to submitting to the judgment of a foreign power the acts of her internal government. Judicious or not (and the Commissioners understand they have all been judicious) they were perfectly legitimate acts and they are protected by her sovereignty.

And even in the inadmissible hypothesis that such judiciousness were wanting in them, the Spanish Commissioners do not know that there is any one who can cause the legitimacy of a legally contracted debt to depend upon the investment, good or bad, which after its creation the debtor may have made of its proceeds.

The Spanish Commissioners cannot close this paper without calling the attention of the honorable American Commissioners to a point which cannot but be resolved in the treaty, in obedience to the stipulations of the 6th basis of the Protocol, which is as follows: "Upon the conclusion and signing of this Protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon

as possible by each Government to the commanders of its military and naval forces."

Even before the signing of the Protocol the President of the Union, after apprising the Ambassador of France on the 30th of July last of the conditions the United States imposed on Spain for restoring peace therewith, said to him that he consented to granting the suspension of hostilities as soon as the "Spanish Minister of State should make known to the Ambassador of France, his representative in Washington, that he accepted the negotiations upon the bases suggested by the Federal Government; and authorized the said Ambassador to sign in his name the preliminary minute which put an end to the hostilities.

The Spanish Government make known its agreement to such bases, and authorized the Ambassador of France to accept and sign them in its name through its dispatch of August 7, which was immediately communicated to the Government at Washington. Notwithstanding this, the hostilities were not then suspended. But finally the suspension thereof was agreed to a few days later, that is on the 12th, in the said 6th article of the Protocol.

In spite of this, on the 13th, General Merritt, commander of the American forces in Manila, and the Admiral of the fleet in that bay, demanded the surrender of the place, and as its authorities did not agree thereto, the said forces opened fire on the San Antonio Abad powder magazine and on the trenches which defended the city on the land side, unnecessarily causing a considerable number of losses to the Spanish forces, who would have peacefully delivered the city over to the Americans in obedience to the third basis of the Protocol that they might hold it as a guaranty pending the conclusion of the treaty of peace.

General Merritt entered Manila by force, he made prisoners of war of its garrison made up of eight or nine thousand men, he took possession of the public funds and the collection of taxes, including customs receipts; he named as Intendant General and Administrator of the Public Treasury, and Tax Collector, the officers of his army he saw fit, thereby displacing the Spanish officials. He relieved the Spanish Commander of the Civil Guard charged with the maintenance of public order; he constituted military courts; he opened the port of Manila and all the other ports of the Philippines in the possession of his land and naval forces to the commerce of his nation and of neutral nations, conditioned on the payment of the dues in force at the time of his arrival, which were collected by his officials.

All of this is recorded in the preliminary minute of the capitulation of August 13, in the capitulation of the 14th itself, in the proclamation of General Merritt of like date, in his orders of the 22d and 23d of the same month, and in the others dictated by the American authorities and officials in Manila.

The Spanish Government remonstrated to that of Washington through the French Embassy against everything that occurred there on August 29 and the 3d and 11th of September last, repeating such remonstrances since and down to the present time, signally insisting upon the immediate release of the garrison held prisoners in Manila and upon the return of their arms, since, on the one hand, it could not send reinforcements from the Peninsula to the archipelago, nor would the United States look favorably upon such an action, and, on the other hand, it needed those forces to liberate the thousands of Spanish prisoners of the Tagalo insurgents, victims of their ill-treatment, and to combat and dominate that insurrection of its own subjects.

The remonstrances of the Spanish Government have been up to the present fruitless. These acts are daily assuming a worse phase. On September 21 Captain W. P. Moffatt, appointed by the American Provost-Marshal in charge of the Bilibid prisons with authority to regulate the entrance and release of all kinds of prisoners, released two named Silvestre Laco and Marcos Alarcon, charged with the offence of highway robbery; two others charged with desertion; six charged with contempt of authority; another charged with assault and robbery, and three others charged with homicide. As is seen, all these prisoners were in jail for common crimes. This unheard of act was communicated to the Government of Her Catholic Majesty by the Commandant General's Office of the station of Manila.

Very well; it becomes necessary to examine all these acts from the standpoint of their legality and with relation to what was agreed on in Article VI. of the Protocol, which constituted a formal obligation for both Governments.

When was the suspension of hostilities agreed on in said Article VI. to go into effect? The answer is not doubtful. The text is clear and explicit; the hostilities were to be suspended upon the conclusion and signing of the Protocol. This occurred on the afternoon of August 12. Therefore from that afternoon the warlike acts which either of the belligerents should commit were to be held as not done in order to restore the statu quo ante at the moment of signing the Protocol.

It is idle, and may even be an insult to the great learning of the American Commission, to expound here the doctrine, not only admitted without contradiction since the time of Grotius in international law and usage, and to which all the learned Anglo-American treatise-writers have given their assent and support, but which is furthermore raised in the United States to the category of established law in article 140 of the Instructions to Armies in the Field, which reads as follows: "The armistice

binds the belligerents from the day agreed upon between them for its going into effect; but the officers of the two armies are not responsible for this except from the day upon which they are officially notified of the armistice."

The day when it was to go into effect determined in Article VI. of the Protocol was that on which it should be concluded and signed. There it says verbatim: "Upon the conclusion and signing of this Protocol, hostilities between the two countries shall be suspended."

General Merritt and the Admiral of the squadron may not be personally responsible for the blood they unnecessarily shed on the 13th if they had no official notice then of the Protocol which had been signed on the previous day in Washington; but this does not conflict, as one of the most learned writers on international law says, with military honor, demanding that they scrupulously abstain from profiting by any advantage that may be gained through the ignorance of troops who may not yet have been informed of the armistice. In cases like this the belligerent power whose forces through ignorance commit a warlike act, cannot profit by its advantages, and should restore things to the statu quo ante, indemnifying the belligerent injured for the damages and injuries he may have suffered through said warlike act, and restoring, as is said by the learned Anglo-American publicist, Dudley Field, all prizes taken in violation of the armistice.

This is so elementary and common in the United States that in their colleges the work entitled "Elements of International Law and Laws of War," written by Major General Halleck, serves as a text-book, and in the Philadelphia edition thereof, page 283, appears the following:

"The truce binds the contracting parties from the moment of its conclusion unless otherwise specially stipulated; but it does not bind the individuals of a nation to the extent of making them personally responsible for its rupture until they have actual and positive notice thereof.

"Consequently, if individuals with knowledge of the suspension of hostilities, kill an enemy or destroy his property, they do not by such acts commit a crime, nor are they bound to pecuniary indemnity, but if prisoners or prizes are taken the sovereign is bound to immediately release the former and to restore the prizes."

The American Government has not released, up to this time, the imprisoned garrison of Manila, nor has it reduced its military occupation to the limits of a simple right to garrison it, which is, according to Article III. of the Protocol, the only thing it had a right to do as a guaranty until the signing of the treaty of peace.

The Spanish Commissioners, therefore, in obedience to what was expressly agreed to in the Protocol, understand that the treaty of peace ought to embody:

1. The immediate delivery of the place to the Spanish Government.
2. The immediate release of the garrison of the same.
3. The return to the Spanish Government of all the funds and public property taken by the American army since its occupation of the place, and of the taxes of every kind collected or to be collected up to the time of returning the same.
4. The obligation on the part of the United States to indemnify Spain for the serious damage occasioned her by the detention as prisoners of the said troops, to which detention is due the spreading with impunity of the Tagalo insurrection in the island of Luzon and its invasion of the Visayas Islands, and because, moreover, to this same cause has been due the ill-treatment of thousands of Spanish prisoners, civil and military; treatment to which the Tagalo insurgents have continued to subject them with impunity.

In virtue of what has been said the Spanish Commission has the honor to make to the American Commission the following proposition:

1. That it cannot accept the propositions it has presented asking for the cession of the sovereignty of the Philippine Archipelago to the United States, as it understands that this is contrary to the preliminaries of peace agreed upon in the Protocol of Washington.

2. In consequence of this it invites the American Commission to present, in accordance with the stipulations of Articles III. and VI. of the Protocol, a proposition concerning the control, disposition and government of the Philippine Archipelago and concerning the obligation which, as has just been said, it is the duty of the United States to contract because of the acts of war committed by its troops after the signing of the Protocol in forcibly seizing the city of Manila and performing acts beyond the scope of the only rights the United States could exercise in that city, its bay and harbor, pursuant to the stipulations of the said Article II. of the Protocol.

True Copy:

EMILIO DE OJEDA.

Protocol No. 13.

CONFERENCE.

of November 9, 1898.

On the 8th instant, the day to which the conference was adjourned, the American Commissioners requested a postponement of the meeting from 2 to 4 o'clock, in order that an opportunity might be given for the completion of the copying of their answer to the counter-proposition presented by the Spanish Commissioners at the last session. The Spanish Commissioners being unable to be present at the latter hour, the session was, on their suggestion, postponed till the 9th of November, at 2 o'clock p. m., at which hour there were

Present—

On the behalf of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners presented an answer to the counter-proposition submitted by the Spanish Commissioners on the 4th instant in relation to the Philippines. A copy of the answer is hereto annexed.

The Spanish Commissioners stated that they would examine the answer, but that its length and the necessity of having it carefully translated made it impossible for them at the moment definitely to state what time would be needed for a reply; and they proposed either to advise the American Commissioners later in the day when the Commission might meet again, or at once to designate a day without prejudice to asking for a postponement, should it be necessary, and should the nature of the document require it.

The American Commissioners preferring the latter course, the conference was adjourned till Saturday, the 12th of November, at 2 o'clock, p. m., with the understanding that the Spanish Commissioners might if necessary ask for a postponement.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

Protocolo No. 13.

CONFERENCIA

Del 9 de Noviembre de 1898.

El 8 del corriente, día señalado para la reunion de las Comisiones, solicitaron los Comisarios americanos que en vez de celebrarse a las dos tuviese lugar a las cuatro de aquella tarde, a fin de completar la copia de su respuesta a la contraproposición presentada por los Comisarios españoles en la última sesión. No pudiendo concurrir a dicha hora los Comisarios españoles, se aplazó a propuesta suya hasta hoy 9 de Noviembre a las 2 p. m. en cuya hora se hallan

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de España:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leída y aprobada el acta de la sesión anterior.

Los Comisarios americanos presentan una contestación a la contraproposición presentada en la sesión del 4 del corriente por los Comisarios españoles relativa a las Islas Filipinas y se une dicho documento a esta acta.

Los Comisarios españoles manifestaron que examinarían dicha contestación y que en vista de su extensión y de la necesidad de traducirla con esmero, que hacía imposible el saber a punto fijo el tiempo que se necesitaría para contestarla, proponían, ya sea dar aviso a la Comisión americana aquella noche misma, del día en que podía reunirse la Comisión, ya sea fijar en aquel momento un día sin perjuicio de pedir un aplazamiento si fuese necesario y resultase de la naturaleza del documento.

Los Comisarios americanos habiendo dado la preferencia a la segunda de estas proposiciones, se aplazó la conferencia hasta el sábado 12 del corriente a las 2 p. m. en la inteligencia de que los Comisarios españoles tendrían la facultad de pedir un aplazamiento si lo considerasen necesario.

Firmado: E. MONTERO RIOS,
B. DE ABARZUA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

Annex to Protocol No. 13.

ANSWER OF THE AMERICAN COMMISSIONERS TO THE PROPOSITION OF THE SPANISH COMMISSIONERS

of November 3, 1898.

The American Commissioners, replying to the Spanish proposition of the 4th instant, will proceed at once to the examination of the grounds on which the Spanish Commissioners endeavor to justify their expression of surprise at the American proposals of the 31st of October on the subject of the Philippines.

The Spanish argument sets out with the erroneous assumption that the United States based its demands in respect of the Philippines upon the terms of the Protocol in the same sense as it bases its demands in regard to Cuba and Porto Rico upon the terms of the same instrument; and, proceeding upon this assumption, it finds in the position of the United States on the two subjects an inconsistency. The United States, it declares, adhered, in the respect of Cuba and Porto Rico, to the "letter" of the Protocol, while in the case of the Philippines, it has presented a demand "not included in or covered by the articles" of that agreement.

The American Commissioners are not disturbed by this charge of inconsistency, since they deem it obviously groundless. They based their demands in regard to Cuba and Porto Rico upon the precise terms of the Protocol, because it was in those very terms that the United States had made its demands and Spain had conceded them, by promising to "relinquish all claim of sovereignty over and title to Cuba," and to "cede" to the United States Porto Rico and certain other islands. The United States, in insisting upon the words of the Protocol on these subjects, merely asked that the precise concessions of Spain be made good.

In the case of the Philippines, the United States, except as to the bay, city, and harbor of Manila, confined itself to demanding that the subject should be left in the widest and fullest sense for future negotiations. While it did not, with the exception referred to, demand specific concessions, it reserved and secured the right to demand them. Its position, therefore, is, not that its present demands in respect of the Philippines were specifically set out in the Protocol, but that they are justified by and included in the right which it therein expressly reserved and secured to make demands in the future.

Putting aside, however, the erroneous assumption of which notice has just been taken, it appears that the Spanish Commissioners differ with the American Commissioners as to the scope and meaning of the third article of the Protocol signed by the representatives of the two Governments at Washington on the 12th of August, 1898. This article is as follows:

"ARTICLE 3.—The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace, which shall determine the control, disposition and government of the Philippines."

The Spanish Commissioners contend that in the negotiation and settlement of a treaty under this article nothing can be demanded by the United States which impairs the sovereignty of Spain over the islands, and that a fair construction of the terms of the article can require only such changes in the government of the islands, reforms in administration and kindred changes, as do not affect ultimate Spanish sovereignty.

It is the contention on the part of the United States that this article leaves to the determination of the treaty of peace the entire subject of the future government and sovereignty of the Philippines necessarily embraced in the terms used in the Protocol.

The Spanish Commissioners support their contention upon two grounds: First, that the meaning of the words is not such as to include the sovereignty of Spain in the Philippines. Second, that the history of the negotiations, and the reservations made by Spain in the course thereof, preclude the United States from making its claim.

It is a principle of law no less applicable to international differences than to private controversies that where the result of negotiations has been embodied in a written compact, the terms of such agreement shall settle the rights of the parties. The reasons upon which this doctrine rests are too well known to need recapitulation here. While the United States might well rest its case upon a construction of the terms used, it has no disposition to avoid the fullest examination

and the most searching scrutiny of the negotiations which preceded the making of the Protocol, as they but serve to make clear the purpose of the parties to leave to the treaty now in process of negotiation the fullest opportunity to dispose of the government and sovereignty of the Philippine Islands in such a manner as might be recorded in the treaty.

The two Governments being at war, negotiations with a view of obtaining a treaty of peace were opened by the Government of Spain through the Minister of State addressing to the President of the United States, in the name of the Government of Her Majesty the Queen Regent, a note dated the 22d of July, 1898, which it is not necessary to set out in full here. It is sufficient to say that therein the President of the United States is asked to name the terms upon which peace may be had between the two countries. This note was presented to the President of the United States on the 26th day of July, 1898, by Mr. Cambon, Ambassador of the French Republic at Washington, authorized to make the application, and represent the Spanish Government in the subsequent negotiations which led up to the execution of the Protocol. At that meeting the President received the note of July 22 from the Spanish Government and advised Mr. Cambon that after consultation with his Cabinet he would prepare an answer which could be transmitted to the Spanish Government. On July 30, following, the terms of peace having been carefully considered and agreed upon by the President and his Cabinet, the President received Mr. Cambon at the Executive Mansion in Washington, at which meeting were also present Mr. Thiebaut, Secretary of the French Embassy in Washington, and the then Secretary of State of the United States. The answer of the President to the communication of the Spanish Government, dated July 30, 1898, was then read to Mr. Cambon. This note was in the exact form in which it was afterward signed and delivered to Mr. Cambon to be sent to the Spanish Government, with a single exception. After some discussion of the terms of the note as to Cuba, and Porto Rico and other West Indian Islands, Mr. Cambon said he did not know what the Spanish Government would desire as to the Philippines, and no matter what the note might say as to the Commission, the Spanish Government would regard the purpose of the United States as being fixed to acquire not only Cuba and Porto Rico, but the Philippines as well. The President said that as to the Philippines the note expressed the purposes of this Government and their final disposition would depend upon the treaty to be negotiated by the Commissioners and ratified by the interested Governments.

After further discussion, in which the President reiterated that the treaty must determine the fate of the Philippines, and the note of the President on that subject reading then as now with the single exception that the word "possession" was then in Article III., so that it read "control, possession and government of the Philippines" where it now reads "control, disposition and government of the Philippines," Mr. Cambon said that the word "possession" translated into Spanish in such a way as to be regarded of a severe and threatening nature, and suggested a change in that word. He suggested the word "condition." The President declined to change the word except for a word of similar import or meaning. "The word "disposition" being suggested, after considerable talk the President consented that that word, not changing the meaning, being indeed a broader one and including possession, might be substituted. Thereupon the note at the close of the interview of July 30, in exactly the form it was originally cast with the single change of the word "disposition" for "possession," was delivered to Mr. Cambon to be communicated to the Spanish Government.

On Wednesday, August 3, in the afternoon, Mr. Cambon having intimated a desire for a further interview with the President, another meeting between the same persons was held at the Executive Mansion. Mr. Cambon said the Spanish Government had received the answer of the President, and that it was regarded by Spain as very severe. After asking a modification as to Porto Rico, to which the President promptly answered that he could not consent, Mr. Cambon said there was a disposition to believe in Spain that the United States intended to take the Philippine group; that the Spanish Government appreciated that reforms were necessary in the government; that American privileges should be granted; but that Spanish sovereignty should not be interfered with was a matter which Spain would insist upon. The President answered that the question of Cuba, Porto Rico and other West India Islands, and the Ladrões, admitted of no negotiation; that the disposition of the Philippine Islands, as he had already said to Mr. Cambon, must depend upon the treaty which might be negotiated, and that he could not make any change in the terms theretofore submitted. Mr. Cambon called attention to the wording of the note as to the possession of the city, bay and harbor of Manila to be retained during the pendency of the treaty, and asked what was to be done with them afterward. The President said that must depend upon the terms of the treaty.

This is the same interview alluded to in the memorandum of the Spanish Commissioners as having occurred on the 4th of August. It in fact occurred on the afternoon

of August 3, the difference in date arising from the fact, no doubt, that it was reported on the 4th of August. This can make but little difference, as there was but one interview at that time.

In reporting the conversations, and comparing the memoranda made by Mr. Cambon with those made by the representative of the American Government then present, it must be borne in mind that Mr. Cambon did not speak or understand English, but communicated with the President through the medium of an interpreter, his Secretary, and that neither of the American representatives understood or spoke the French language. Making this allowance, it is perfectly apparent that the American President, even in the version reported and transcribed in the memorandum of the Spanish Commission, at all times maintained that the treaty of peace should determine the control, disposition and government of the Philippines. The President did say that the Philippine question was the only one left open for negotiation and settlement in the treaty. It is undoubtedly true that it was not then fully settled in his own mind as to what disposition should be made of the Philippines. Had it been, there would have been nothing to leave to negotiation and settlement in the treaty. It was the purpose of the President in everything written and spoken to leave to the negotiations of the treaty the most ample freedom with reference to the Philippines, and to settle, if their negotiations should result in an agreement, the control, disposition and government of those islands in the treaty of peace. When Mr. Cambon spoke of Spain's purpose to retain sovereignty over those islands, the President did say he wanted it clearly understood that no ambiguity should remain upon that point, but that the whole matter should be decided as set forth in the treaty of peace, which should determine the control, disposition and government of the Philippine Islands. He certainly did not use the word "intervention" nor limit the subject of negotiation to "advantages" in the Philippines; nor can it be claimed that any report was made to the Spanish Government of the precise English words used by the President. In the same paragraph quoted in the memorandum of the Spanish Commission in which it is said he used the words above quoted, it is added that the President also said the negotiators should decide upon the "intervention" (control), disposition and government of the Philippine Islands. Even this version of the conversation is ample proof that the President showed no uncertainty as to the scope and meaning of the terms used. He did say in substance, in reply to the inquiry of Mr. Cambon as to whether the United States had prejudged the matter of the Philippine Islands and the rights to be acquired therein by the United States, that the case had not been prejudged either as to the United States or as to Spain. The whole matter would be left to the Commission for negotiation, and to be settled by the treaty of peace. In the meantime the United States would insist upon holding Manila as laid down in the note, and its disposition thereafter would depend upon the terms of the treaty. This is reported in the quotation in the Spanish note as the utterance of the President that "the Madrid Government can rest assured that up to now nothing is decided a priori in my own mind against Spain, nor do I consider anything decided by it against the United States." This may not be an unfair interpretation, though not the exact words used by the President. It shows clearly that he did not regard the United States as limited to "advantages in the Philippines," but the whole matter, being undecided in the President's mind, was left open in accordance with the terms of the note. The case was not decided in advance in any of its aspects either for or against either government.

Great stress is laid in the Spanish memorandum upon the allegation that the President had not then determined to take the Philippine group, and indeed did not intend to do so. It is utterly immaterial to inquire as to what either Government would then have insisted upon. There was a mutual agreement that the question should not then be decided. Opportunity for full investigation was reserved, the final conclusion to be arrived at as the result of the negotiations now in progress, in the treaty of peace to be here concluded.

Further conversation as to the number of Commissioners, the place of meeting, et cetera, terminated the interview.

On the afternoon of August 9, Mr. Cambon, having received the note of August 7 sent by the Duke of Almodovar, called by appointment at the Executive Mansion in Washington, at which interview were present the same parties as at the last meeting. That part of that note which relates to the Philippines, in the exact terms in which it was then presented in English text by the French Ambassador to the President of the United States is as follows:

"The terms relating to the Philippines seem, to our understanding, to be quite indefinite. On the one hand, the ground on which the United States believe themselves entitled to occupy the bay, the harbor and the city of Manila, pending the conclusion of a treaty of peace, cannot be that of conquest, since in spite of the blockade maintained on sea by the American fleet, in spite of the siege established on land by a native supported and provided for by the American Admiral, Manila still holds its own, and the Spanish standard still waves over the city. On the other

land, the whole Archipelago of the Philippines is in the power and under the sovereignty of Spain. Therefore the Government of Spain thinks that the temporary occupation of Manila should constitute a guaranty. It is stated that the treaty of peace shall determine the control, disposition, and government of the Philippines; but as the intentions of the Federal Government by regression remain veiled, therefore the Spanish Government must declare that, while accepting the third condition, they do not a priori renounce the sovereignty of Spain over the archipelago, leaving it to the negotiators to agree as to such reforms as the condition of these possessions and level of culture of their natives may render desirable.

"The Government of Her Majesty accepts the third condition, with the above-mentioned declarations."

"Such are the statements and observations which the Spanish Government has the honor to submit in reply to your Excellency's communication. They accept the proffered terms, subject to the approval of the Cortes of the Kingdom, as required by their constitutional duties.

"The agreement between the two governments implies the irretrievable suspension of hostilities and the designation of Commissioners for the purpose of settling the details of the treaty of peace and of signing it, under the terms above indicated."

It is translated in the memorandum of the Spanish Commissioners in language differing somewhat from the terms of the note as presented to the President. In the translation in the memorandum it is said that the treaty shall determine "the intervention, disposition and government of the Philippine Islands." In the note as presented to the President it reads "It is stated that the treaty of peace shall determine the control, disposition and government of the Philippines." The word "entire" precedes "sovereignty" in the translation embodied in the Spanish note.

It is true that, taking these words of the Duke of Almodovar either as they were conveyed to the President of the United States, or as they are now quoted in the Spanish proposition, it may be argued that they do no more than reserve to Spain the right to maintain that she did not in advance of the negotiations for peace renounce her sovereignty over the archipelago. She did this, by her own declaration, for the reason that the intentions of the United States were "veiled," clearly perceiving that by the terms of the demand the United States would have the right, if it saw fit to exercise it, to ask that she yield her sovereignty over the group, and that her sovereignty was thus put in jeopardy, she took the precaution to say that she did not intend, in assuming the chance of such a demand, to concede it in advance.

The American Commissioners do not deny that this may be a fair construction of this particular paragraph of the Duke's note. The representatives of the United States were not willing, however, to leave anything to construction. When therefore the Duke's answer was read to the President it was immediately objected to by him and the Secretary of State, in that it was vague and indefinite, purporting to accept the terms laid down in the note of the United States, while requiring some modification. In referring to the Philippines, while in one paragraph it stated the acceptance of the terms, in another it seemed to retain the full right of sovereignty, with such reforms, etc., as that Government might see fit to grant. The unsatisfactory character of this answer is more clearly shown when in the subsequent part of the same note, not quoted in the memorandum of the Spanish Commissioners, it was said without qualification that they (the Spanish Government) accept the proffered terms, subject to the approval of the Cortes of the Kingdom, as required by their constitutional duties. In the part of the note referred to above it is said "the Spanish Government must declare that, while accepting the said condition, they do not a priori renounce the sovereignty of Spain over the archipelago, leaving it to the negotiators, etc." These contradictory statements were called to the attention of Mr. Cambon, and made the note, as was said to him, unsatisfactory to the United States.

It is to be observed, as has already in effect been pointed out, that even the terms of this note are inconsistent with the claim now put forward that Spanish sovereignty shall not be interfered with, for the length to which the statement goes in the note is that the Spanish Government does not a priori relinquish entire sovereignty over the Philippine Archipelago, thus leaving it clearly to be inferred that the Spanish Government recognized that the negotiations resulting in a treaty might require a relinquishment of Spanish sovereignty consequent upon such negotiations.

Mr. Cambon, having heard the objections raised by the American representatives to the note, asserted that allowance must be made for different translations which the note had undergone in course of transmission, and to the desire of the Spanish Government to express regret at the loss of its colonies; and he was very confident that it was the intention to accept the terms of the United States. It was then suggested by the American representatives that if this be true, and the note was to be regarded as a full acceptance, the best way to settle the matter was to put the terms in the shape of a definite Protocol, which the President would authorize the Secretary of State to sign for the United States, Mr. Cambon to submit to the Spanish Government the exact terms of the Protocol, to which an answer Yes or No could be

had; and if the Spanish Government accepted the Protocol, that would end the controversy. Mr. Cambon concurred in this view, and said if the Protocol was drawn up in proper form he would submit it to the Spanish Government, and if authorized would execute it on its part.

On that evening, August 9, the Protocol was prepared in the State Department at Washington, and taken to the Executive Mansion, where it was submitted to the President and members of the Cabinet there present. On the morning of August 10, Mr. Cambon called at the State Department at Washington, a draft of the Protocol was submitted to and approved by him, and put into French by Mr. Thiebaut, Secretary of the French Embassy at Washington, and experts in the State Department. It was carefully compared with the English text, and then telegraphed by Mr. Cambon to the Spanish Government. On the same day, August 10, the note of the Secretary of State enclosing the Protocol was sent to Mr. Cambon in Washington. This note, it is said, contains the admission of the Secretary of State of the United States that the note of the Duke of Almodovar of August 7 "contained in its spirit the acceptance by Spain of the conditions proposed by the United States." The best answer to this obvious misconception of the terms of the note of the Secretary of State is in the text of the note itself, which is as follows:

"Department of State,

Washington, August 10, 1898.

"EXCELLENCY,

"Although it is your understanding that the note of the Duke of Almodovar, which you left with the President on yesterday afternoon, is intended to convey an acceptance by the Spanish Government of the terms set forth in my note of the 30th ultimo as the basis on which the President would appoint Commissioners to negotiate and conclude with Commissioners on the part of Spain a treaty of peace, I understand that we concur in the opinion that the Duke's note, doubtless owing to the various transformations which it has undergone in the course of its circuitous transmission by telegraph and in cipher, is not, in the form in which it has reached the hands of the President, entirely explicit.

"Under these circumstances, it is thought that the most direct and certain way of avoiding misunderstanding is to embody in a Protocol to be signed by us as the representatives, respectively, of the United States and Spain, the terms on which the negotiations for peace are to be undertaken.

"I therefore enclose herewith a draft of such a Protocol in which you will find that I have embodied the precise terms tendered to Spain in my note of the 30th ultimo, together with appropriate stipulations for the appointment of Commissioners to arrange the details of the immediate evacuation of Cuba, Porto Rico, and other islands under Spanish sovereignty in the West Indies, as well as for the appointment of Commissioners to treat of peace.

"Accept, Excellency, the renewed assurance of my highest consideration.

"(Signed:) WILLIAM R. DAY.

"His Excellency M. Jules Cambon, etc."

In this note, so far from saying that the Secretary of State of the United States understands that the note of the Spanish Government of August 7 accepts the American terms, it is distinctly said "although it is your (Mr. Cambon's) understanding that the note of the Duke of Almodovar is intended to convey the acceptance by the Spanish Government of the terms set forth in my note of the 30th ultimo, . . . I understand that we concur in the opinion that the Duke's note, doubtless owing to the various transformations which it has undergone in the course of its circuitous transmission by telegraph and in cipher, is not, in the form in which it reached the hands of the President, entirely explicit."

Here it is distinctly stated that the Secretary of State and Mr. Cambon concur that the note is not entirely explicit. Was it then to be expected after all this careful negotiation that a note which the American representatives contended did not accept the terms of the United States, and which both negotiators agreed was not explicit, was to be received as a satisfactory answer to the American demand? Not so.

"Under these circumstances it is thought that the most direct and certain way of avoiding misunderstanding is to embody in a Protocol, to be signed by us as the representatives, respectively, of the United States and Spain, the terms on which the negotiations for peace are to be undertaken."

This is a most emphatic and definite declaration that the note of August 7 was not satisfactory, and that it was the purpose of the United States to leave nothing open or misunderstanding, but to embody in a contract so plain that dispute would be forever foreclosed, the exact terms upon which negotiations for peace would be undertaken. The note goes on to say "I therefore enclose herewith a draft of such a Protocol, in which you will find that I have embodied the precise terms tendered

to Spain in my note of the 30th ultimo, together with appropriate stipulations for the appointment of Commissioners, etc." What does this not mean? Does it admit the construction that the proposal was intended to embody the acceptance of August 7, reserving Spanish sovereignty? It is definitely settled, as a perusal of the documents will show, that the Protocol embodied, not the uncertain and equivocal terms of the note of August 7, but the precise terms stated in the note of the American Government of July 30. This note to Mr. Cambon enclosed the Protocol just as it was written and just as it was signed by the parties. It would seem, if ever an attempt was made to have a clear understanding, if ever all precautions were taken which could leave no room for misunderstanding, such was the course pursued in the present case.

It is thus seen how utterly groundless is the declaration in the Spanish "proposition" that, in order to determine the meaning of the Protocol, it is necessary to "bear in mind . . . the negotiations carried on between the two parties which culminated in this agreement, and in which the interpretation of the latter had been given beforehand and officially!" In the correspondence thus invoked by the Spanish Commissioners as an interpretation of the Protocol, the two Governments did not contemplate the execution of such an instrument; and if the response of the Spanish Government to the American demands had taken the form of a simple acceptance, no Protocol would have been made. The first suggestion of such an instrument was that made in the interview in which the Spanish response was declared to be unsatisfactory. It was because the Spanish response was unacceptable that the United States demanded a Protocol. And it is upon this rejected response that the Spanish argument for the limitation of the clear scope and meaning of the Protocol is built.

If further proof of the soundness of the position of the United States were needed, it would be found in a most convincing form in the telegram sent by Mr. Cambon to the French Minister of Foreign Affairs. See the French "Yellow Book" referred to in the Spanish memorandum, telegram number 9, Mr. Cambon to the French Minister of Foreign Affairs.

"No. 9

"M. JULES CAMBON, Ambassador of the French Republic at Washington,
to M. DELOASSE, Minister of Foreign Affairs.

Washington, August 10, 1898.

"The Federal Government has decided to state precisely (preciser), in a Protocol, the bases upon which the peace negotiations must, in its judgment, be entered upon.

"I send you herewith this document, which I shall thank you to transmit to the Spanish Government.

"(Signed:) J. CAMBON."

In this telegram, which was immediately communicated to the Spanish Government, and which led to the telegram to Mr. Cambon authorizing him to sign the Protocol, followed by full power from the Queen Regent to Mr. Cambon to that effect, Mr. Cambon distinctly says, not that the American Government has accepted the note of August 7, or in any wise agreed to such reservations as are contained therein, but that "the Federal Government has decided to state precisely (preciser), in a Protocol, the bases upon which the peace negotiations must, in its judgment, be entered upon. I send you this document, etc."

It thus clearly appears that the bases of peace negotiations were to be determined by the instrument which was enclosed, and which it was understood put in definite terms the ultimate agreement of the parties.

It was because the answer made in the note of August 7 was rejected by the United States, and for this reason alone, that hostilities were not upon the receipt of that note declared to be suspended; and it has remained for the Spanish Commissioners in their "proposition" to advance for the first time in behalf of their Government the suggestion that such a declaration should then have been made. It was not so made because that note was not received as an acceptance of the American demands. Hostilities were declared to be suspended only upon the signature of the Protocol.

The correspondence quoted in the French "Yellow Book," no less than the subsequent communications from Mr. Cambon to the American Government, shows distinctly that with the exact terms of this Protocol before it, the Spanish Government, on the 11th instant, and subsequently by full power of the Queen Regent, authorized Mr. Cambon to execute the Protocol in behalf of Spain. Observe the language of the note of Mr. Cambon to the American Secretary of State of August 12, 1898:

"Embassy of the French Republic in the United States.

"Washington, August 12, 1898.

"MR. SECRETARY OF STATE:

"I have the honor to inform you that I have just received, through the intermediation of the department of foreign affairs at Paris, a telegram, dated Madrid, August 11, in which the Duke of Almodovar del Rio announces to me that, by order of Her Majesty the Queen Regent, the Spanish Government confers upon me full powers in order that I may sign, without other formality and without delay, the Protocol whereof the terms have been drawn up by common accord between you and me. The instrument destined to make regular the powers which are thus given to me by telegraph will be subsequently addressed to me by the post.

"His Excellency the Minister of State adds that in accepting this Protocol, and by reason of the suspension of hostilities which will be the immediate consequence of that acceptance, the Spanish Government has pleasure in hoping that the Government of the United States will take the necessary measures with a view to restrain (empêcher) all aggression on the part of the Cuban separatist forces.

"The Government of the Republic having, on the other hand, authorized me to accept the powers which are conferred upon me by the Spanish Government, I shall hold myself at your disposition to sign the Protocol at the hour you may be pleased to designate.

"Congratulating myself upon thus co-operating with you toward the restoration of peace between the two nations, both friends of France, I beg you to accept, Mr. Secretary of State, the fresh assurances of my very high consideration.

"(Signed:) JULES CAMBON."

In the light of these facts, it appears there is absolutely no foundation for the claim that the American Government accepted the Spanish reservations so far as they are contained in the note of the Duke of Almodovar of August 7. Had that note been only a distinct and unqualified acceptance of the terms as contained in the American note of August 30, it would have been unnecessary to require that all uncertainty and doubt should be removed by reducing into few and simple terms, which it was believed could never be misunderstood, the final agreement of the parties. So far from remaining unanswered, the note of August 7 was declared unsatisfactory when presented to the President. Thus ended the attempt to come to an agreement by correspondence; and it was decided that a Protocol should embody the ultimate terms.

The Spanish Government telegraphed the amplest authority to Mr. Cambon to execute it. We are then remitted to the terms of the Protocol itself.

The American Government is at a loss to know how stronger terms could have been used to evidence the purpose of the President to keep open the most full and absolute right to deal with and determine the dominion over the Philippine Islands. This was the purpose of inserting the third article of the Protocol, which embodied the terms of the third demand of the United States, as set forth in the note of July 30 of the American Government to the Duke of Almodovar, wherein it is said: "Third. On similar grounds the United States is entitled to occupy and hold the city, bay, and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines."

What are these similar grounds? They are to be found in the next preceding paragraph of the note of July 30, in which the President says that, though not then making any demand for pecuniary indemnity, nevertheless he cannot be insensible to the losses and expenses of the United States incident to the war, or to the claims of our citizens for injuries to their persons and property during the late insurrection in Cuba. He must, therefore, require the cession to the United States, and the immediate evacuation by Spain, of the Island of Porto Rico, etc. On similar grounds, to wit, among others, the right of the United States to have indemnity for its losses, the United States will hold the city, bay and harbor of Manila pending the conclusion of a treaty of peace, which shall determine the control, disposition and government of the Philippines.

How could the United States receive indemnity in whole or in part from the control, disposition and government of the Philippines, if Spanish sovereignty was not to be touched? It is difficult to conceive what terms could have been used which would more clearly have evidenced the purpose of the parties to afford the fullest latitude in dealing with the Philippine question. The treaty was to determine not alone the control, disposition and government, but at the same time had full power to determine all that is implied in control, disposition and government. Certainly the word "control" was not used here in the sense of "register" or "inspection," but in its broader sense of "authority or command; authority over; power over; the regulation or rule of."

What word could be broader than "disposition," which has practically the same meaning in both the French and English languages? "The disposal of; distribution of; alienation of; definite settlement of; ultimate destination." We have in these two words, then, authority over, dominion of, final and ultimate destination of the sub-

ject matter. What is "government" but the right of administration, or exercising sovereignty, the direction, the political management of a state? Either of these terms implies power of interfering with sovereignty. Taken together, they give the fullest scope in dealing with all power, governmental, territorial and administrative.

It is not argued in the Spanish "proposition" that these words should have a narrow meaning so far as disposition and government are concerned, but transcribed into the French language it is sought to give a narrower meaning to the word "control." It must be construed in the connection in which it is found in the Protocol, in its broader sense of power or dominion. *Noscitur a sociis* is a legal maxim which applies to the discussion or determination of the meaning of phrases. "Control" associated with disposition and government of territory might have a very different significance when used in another relation in its less familiar meaning of "inspection or register." The word "disposition" used in another association might have an entirely different meaning, and a meaning which, in connection with government and control, would deprive it of all sense.

The American Government, then, feels itself amply supported in its right to demand the cession of the Philippines with or without concessions, relying upon either the exact terms of the Protocol or those terms interpreted in the light of the negotiations, oral and written, which led to its execution.

The Commissioners of the United States notice with regret that an attempt has been made in the memorandum of the Spanish Commissioners to invoke the high authority of the French Minister for Foreign Affairs in the interpretation of the Protocol, so as to exclude therefrom all mention of the right of the treaty to deal with the control, disposition and government of the Philippines. In the French "Yellow Book" cited by the Spanish Commissioners, it is apparent that as early as the 10th of August the French Government was in possession of the exact terms of the Protocol, transmitted in the note of that date of its Ambassador, Mr. Cambon. Would anybody believe that in summing up this note the Minister would intentionally omit one of the most essential parts of the Protocol?

The note number 19 referred to is no part of the negotiations; its purpose was merely to advise the Ambassadors of the French Republic at London, St. Petersburg, Berlin, Vienna, etc., of the result of the action of the representative of France in bringing about a suspension of hostilities, and the preliminary agreement as to peace, between two nations toward which the French Government was actuated by feelings of humanity and mutual friendship. In this note it is said that the points upon which both parties have reached an agreement were set forth in a Protocol. In stating the contents of that instrument, doubtless through inadvertence, it is not stated that the treaty shall determine the control, disposition and government of the Philippines.

The attention of the Minister being called to this matter by the American Ambassador in Paris, he very promptly corrected any misapprehension which might exist as to his dispatch. This appears in the following letter from the American Ambassador, which has just been received by the American Commissioners:

"Ambassade des Etats-Unis, 19, Avenue Kleber.

Paris, November 5, 1898

"Dear Sir:

"I beg to inform you that I saw the French Minister of Foreign Affairs in regard to that portion of the reply of the Spanish Peace Commissioners in which they refer to a letter sent by him to the French Ambassadors dated August 15 1898, which appears in the French "Yellow Book," and attempt to construe the language used therein as an interpretation of the French Minister of the meaning of the Protocol, and speak of the unquestionable moral weight of the testimony therein given by him regarding that instrument. He assured me emphatically and unreservedly that the letter referred to was intended to be simply a brief resume of the general features of the preliminary peace negotiations carried on between the two belligerents, and that he did not attempt to quote the precise language of the Protocol. He disclaimed any intention of giving any views of his own regarding it, having no authority for so doing, and declared that the brief mention contained in his letter could in no wise be construed as an interpretation by him of the terms or meaning of that instrument. He promised that he would at once send to the French Ambassadors the full text of the Protocol in order that they might be informed of its conditions in extenso and that there might be no ground for misapprehension as to its terms.

"The Minister repeated what he had said several times before, and which I know to be true, that he and his Government had all along observed a strict and impartial neutrality between the two powers which were negotiating, being equally friendly to both, and that he intended to continue the observance of such neutrality.

"Very truly yours,

"(Signed:) HORACE PORTER.

"Hon. William R. Day, President of the American Peace Commission, Paris."

It is stated that the occupation of Manila was to be only temporary. This is undoubtedly true. The Protocol, so far as it relates to the Philippines, is itself provisional. It expressly provides for the doing of certain things pending the conclusion of a treaty which is in this particular to supersede it. Had it provided for the permanent occupation of Manila by the United States, it would have withdrawn the Philippines to that extent from the sphere of future negotiation.

While the terms of surrender cited in the Spanish memorandum, negotiated after the execution of the Protocol and having nothing to do with the negotiations for peace, show the character of this occupation, it is to be noticed that the very paragraph cited from the terms of that document shows that it was equally contemplated that conditions might arise which would require the evacuation by the Spanish forces of the city. In it it is said "the return of the arms surrendered by the Spanish forces shall take place when they evacuate the city or when the American army evacuates it. The commanders of the American and Spanish forces did not undertake to determine the right of either party permanently to hold Manila, but contemplated conditions which might require its evacuation by the forces of either country."

But it is as idle to cite the stipulations of the capitulation for the purpose of determining the meaning of the Protocol as it would be to cite the stipulations of the Protocol for the purpose of determining the meaning of the capitulation. It is notorious that, owing to the interruption of telegraphic communication, Manila was captured and the capitulation arranged and concluded by the commander of the American forces in the Philippines without communication with his Government, which was at the moment as uninformed of what was taking place at Manila as was its commander of what was taking place at Washington. It is superfluous, therefore, to argue, even if it were material to do so, that the stipulations of the capitulation cannot be invoked in explanation or limitation of the stipulations of the Protocol. For the same reason it is perhaps unnecessary to comment upon the statement that "General Merritt, contrary to what had been agreed upon in Article VI. of the same (Protocol), forcibly took possession of Manila." The American Commissioners are loth to assume that the Spanish "proposition" employs these words for the purpose of intimating that General Merritt could at the time of the capture of Manila have had knowledge of the Protocol. It is a fact doubtless well known to the Spanish Government that on the 16th of August last, four days after the signature of the Protocol, and four days before the receipt at Washington of the news of the capture and capitulation of Manila, the Department of State addressed to the French Ambassador a note soliciting the consent of the Spanish Government to the restoration of cable communication between Manila and Hong Kong, in order that continuous telegraphic connection with the Philippines might be re-established.

It is observed that the Spanish Commissioners in their "proposition" say that the words of the Protocol in relation to the Philippines "have not a clear meaning," but that no matter what construction may be placed upon them, "In no case can their meaning be so stretched as to involve in any way the idea of cession of the sovereignty of Spain over the archipelago," since "such a cession or acquisition in perpetuum of the archipelago by the United States, had it been agreed upon in the Protocol, would have been in contradiction with the mere temporary occupation of Manila, which at the same time was agreed upon in the same clause of that instrument." This statement, as well as the paragraph that immediately follows it, merely reiterates the erroneous assumption, to which we have already adverted, that the ultimate demands of the United States in respect to the Philippines were embodied in the Protocol, while, as a matter of fact, the instrument shows upon its face that it was agreed that the formulation of those demands should be postponed till the negotiations for a treaty of peace should be undertaken.

How, then, stands the demand of the Government of the United States for the cession of the Philippine Islands with the concessions which it is willing to make, as set forth in its proposition of the 31st ultimo? This demand might be limited to the single ground of indemnity, but this limitation the American Commissioners do not herein concede. The United States does not now put forward any claim for pecuniary indemnity to cover the enormous cost of the war. It does not take the sovereignty of Cuba; as has been shown in former memoranda submitted by the American Commissioners, it assumes only burdens there. It does demand, and Spain has agreed to cede, the Island of Porto Rico and the small Island of Guam in the Ladronez. What is Spain asked to give up in the Philippines? A country constantly in rebellion against its sovereignty, so that if the United States were to withdraw therefrom to-day, Spain would immediately have to resort to arms to overcome a rebellious and discontented people.

This situation could not be more vividly portrayed than to use the words of the Spanish memorandum in which, after speaking of Spain's neglect of her own wel-

fare to the detriment of her full development, this condition is attributed to "her desire to preferentially attend to her colonies, creatures who, like all others in the order of nature, enlist the utmost solicitude on the part of their mother, who feels and supports them at the sacrifice of her welfare."

The American Commissioners note, with some surprise, that the Spanish Commissioners, so soon after having provisionally accepted the American articles as to Cuba and Porto Rico, now return to the question of the so-called Cuban debt. They regret to find a position which, under certain reserves, had been distinctly waived, immediately resumed, and now expressed in language rarely employed in diplomacy, unless to convey a deliberate ultimatum. The Spanish Commissioners assume that this debt, for the most part incurred by Spain (not Cuba) in the effort first to subjugate the Cuban insurgents, and subsequently to overcome the United States, has the binding effect of a mortgage upon the very land wrested from Spain through the defeat of this effort. They then say that they cannot even admit any discussion as to the validity and efficacy of such mortgages. In language equally unusual, they continue: "Let it be understood, therefore, and the Spanish Commissioners hope there will be no necessity to repeat it, that Spain cannot and ought not to agree in this treaty," etc. Now, since Spain, as lately as in the next to the last paper filed here by her Commissioners did, under reserve, agree in this treaty to waive objections to our articles containing no reference to the so-called Cuban debt, the American Commissioners feel themselves justified in inquiring distinctly whether this sudden change of position is final? Do the Spanish Commissioners wish it to be understood now, without any necessity for repetition, that they will accept no treaty which does not provide for an assumption of this so-called Cuban debt, or for some part of it, by the United States, for itself or for Cuba?

The American Commissioners observe also the declaration that the dignity and self-respect of Spain forbid an inquiry into the use Spain may have made of the proceeds of these loans. Now—to consider only a single aspect of the issue thus raised—it is not denied that the proceeds of a part of these loans were employed directly in making war upon the United States. Is it to be understood that the United States, after succeeding in the war, is forbidden to take notice even of this fact? That would be to require the successful nation to pay the war expenses of the defeated nation. Is it an acceptance, without inquiry, of this part of the so-called Cuban debt, that the Spanish Commissioners declare is demanded by the dignity and self-respect of Spain—which they wish therefore to have now understood, and which they hope there will be no necessity to repeat?

The American Commissioners do not here examine the statements that these debts were legally created, that they may have been legally acquired by individuals of various nationalities, or that Spain is not the revenues, and is bound to the third parties. They do question the statement that Spain does not demand the recognition of these so-called "secured debts" for her own benefit. They are bonds of the Spanish nation, guaranteed by the faith of the Spanish nation, with another guarantee (which might more properly have been called a "subsidiary" one), pledging Spanish sovereignty and control over certain Spanish colonial revenues. Spain has failed to maintain her sovereignty and control over these revenues, and is bound to the third parties with whom she dealt for that failure to make good her title to the security she pledged. The third parties knew what it was pledged for—the continuous effort to put down a people struggling for freedom from the Spanish rule. They took the obvious chances of their investment on so precarious a security, but they must have relied on the broad guarantee of the Spanish nation. It is not for us to deny that "the most elementary duties of public and private probity" justify that reliance, but we do deny emphatically that they require the freed people, or any one acting for them to pay the cost of all the efforts for their subjugation. To admit that such costs could be attached ineradicably to the soil they lived on is to put it in the power of any unjust ruler to condemn a colony to perpetual subjugation and misgovernment by simply loading it with so-called "mortgages" for loans effected without their consent by their oppressors, till it can neither bear them itself nor find anyone else to assume them. That would be a conclusion alike repugnant to common sense and menacing to liberty and civilization.

After reviewing in their "proposition" the provisions of the Protocol, the Spanish Commissioners proceed to inquire whether there is any other "title," not founded on that agreement, upon which the demand for the cession of the group can be supported. Under this head they discuss the capture of Manila by the American forces, and, after concluding that the capitulation was invalid, they declare that the treaty of peace should provide for the immediate delivery of the place to the Spanish Government, the immediate release of the Spanish garrison, and the performance of various acts which imply that the military occupation and government of the city by the United States has been illegal.

These startling pretensions require at the hands of the American Commissioners a comprehensive examination.

On the 22nd of July, 1898, the Government of Spain, impelled by and admitting the adverse results of the war, made representations to the President of the United States by written communication of its Minister of Foreign Affairs, transmitted through the Ambassador of France at Washington, to the expressed end that "the calamities already so great" and "evil, still greater" to the two countries might "be terminated otherwise than by force of arms." The response of the President, through Mr. Day, Secretary of State, to this communication was made July 30, 1898, and was in part as follows:

The President, therefore, responding to your Excellency's request, will state the terms of peace which will be accepted by him at the present time, subject to the approval of the Senate of the United States hereafter.

"Your Excellency in discussing the subject of Cuba intimates that Spain has desired to spare the island the dangers of premature independence. The Government of the United States has not shared the apprehensions of Spain in this regard, but it recognizes the fact that in the distracted and prostrate condition of the island aid and guidance will be necessary, and these it is prepared to give.

"The United States will require:

"FIRST. The relinquishment by Spain of all claim of sovereignty over or title to Cuba and her immediate evacuation of the island.

"SECOND. The President, desirous of exhibiting signal generosity, will not now put forward any demand for pecuniary indemnity. Nevertheless, he cannot be insensible to the losses and expenses of the United States incident to the war or to the claims of our citizens for injuries to their persons and property during the late insurrection in Cuba. He must, therefore, require the cession to the United States and the immediate evacuation by Spain of the island of Porto Rico and other islands now under the sovereignty of Spain in the West Indies and also the cession of an island in the Ladrões, to be selected by the United States.

"THIRD. On similar grounds, the United States is entitled to occupy and will hold the city, bay and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines.

"If the terms hereby offered are accepted in their entirety, Commissioners will be named by the United States to meet similarly authorized Commissioners on the part of Spain for the purpose of settling the details of the treaty of peace and signing and delivering it under the terms above indicated."

The negotiations thus entered into were followed by the Protocol of agreement between the United States and Spain signed at Washington August 12, 1898, by which it was provided:

"ARTICLE I.

"Spain will relinquish all claim of sovereignty over and title to Cuba.

"ARTICLE II.

"Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrões to be selected by the United States.

ARTICLE III.

"The United States will occupy and hold the city, bay and harbor of Manila, pending a conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines."

"ARTICLE VI.

"of that instrument obligated Spain to the immediate evacuation of Cuba, Porto Rico and the other islands under Spanish sovereignty in the West Indies, and provided for the appointment by each Government, within ten days of the above date, of Commissioners who should meet at Havana in Cuba and at San Juan in Porto Rico within thirty days after such date for the purpose of arranging and carrying out the details of such evacuation. By

"ARTICLE V.

"of the Protocol, the Contracting Parties agreed to appoint each not more than five Commissioners to treat of peace, who should meet at Paris not later than October 1, 1898, and proceed to the negotiation and conclusion of a treaty of peace.

"Article VI. of the Protocol is as follows:

"Upon the conclusion and signing of this Protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon as possible by each Government to the commanders of its military and naval forces."

Before the notice provided for in Article VI. could possibly be given, and on the

13th day of August, 1898, the next day after its signature, the American land and naval forces at Manila attacked that city and, upon the 14th of August, 1898, compelled its surrender under the terms of a military capitulation, which comprehended not only the surrender and occupation of the city, but also the surrender of its garrison, being from 9,000 to 11,000 troops in number, and comprising substantially the entire Spanish military force in the Philippine Islands. The United States thereupon, having previously for a long time been in possession of the bay and harbor of Manila, took military possession of that city, and has ever since been in military occupation thereof, administering its government concerns in the manner usual in such cases. In so doing, the United States took possession of the public property of Spain situate in Manila, including certain moneys due to that Government which had been collected as revenues; proceeded to administer, collect and expend the taxes and customs of that port, and also to take charge of and administer the police government of the city; and generally continued to exercise over the city, harbor and bay the rights and powers of a belligerent in rightful military occupancy.

It is now contended by Spain, who also, as a part of that contention, rejects the articles tendered by the United States for the cession to that Government of the Philippine Archipelago, that such occupation and acts were in violation of the Protocol, and that, for that reason, she is entitled:

1. To the immediate delivery of the place (Manila) to the Spanish Government.
2. The immediate release of the garrison, of the same.
3. The return to the Spanish Government of all the funds and public property taken by the American army since its occupation of the place, and all the taxes of every kind collected or to be collected up to the time of returning the same.
4. The recognition of the obligation on the part of the United States to indemnify Spain for alleged serious damage occasioned by the detention as prisoners of her troops, to which detention it is alleged is due the spread with impunity of the Tagalo insurrection in Luzon and its invasion of the Vizayan Islands, and, moreover, because to the same has been due the alleged ill-treatment of thousands of Spanish prisoners, military and civil.

In the dilatory assertion of these extraordinary claims the Spanish Commissioners have at times repudiated and at other times have appealed to and claimed rights under the stipulations of a convention entered into between Spain and the United States, by and under which the rights, duties, liabilities and status of the contracting parties were explicitly settled. That convention is the Protocol of August 12, 1898.

It is contended by the American Commissioners that an establishment of the statu quo provided for by that Protocol, and comprehended within its intent and meaning upon a fair construction of its terms, is the only demand that Spain can, upon her own theory, make in the premises, even if it is hypothetically conceded, for the mere purposes of this branch of the discussion, that the legal propositions which she advances are at all applicable to the alleged breach of the armistice. For the United States insists and has always insisted (except hypothetically as stated above and merely for purposes of this argument) that the military operations by which Manila was captured were justifiable and lawful. The statu quo is the right of the United States to occupy and hold the city, harbor and bay of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines. That condition exists. The United States does so hold such territory. It has been so conceded and insisted by Spain in correspondence which will be particularly considered in another portion of this paper. That occupancy is referable to, and is justified by, the Protocol, and cannot be defeated by the alleged illegality of hostilities. To so invalidate it, it will be necessary for Spain to denounce and repudiate the Protocol in all its parts, including, of course, the authority under which this Commission is proceeding and the stipulation for an armistice, and thus produce a renewal of active war, as we shall elsewhere more fully demonstrate.

It is maintained by the American Commissioners that all and singular the acts done after the surrender of Manila and complained of by Spain were and are rightful acts under the Protocol itself; that they would have been rightful if no naval or military operations whatever had been conducted against that city after the signature thereof, and that their rightfulness is not impaired by such hostile operations.

The Protocol presents two features: One, general in its character, pertaining to negotiations for peace; the other, subordinate and special in its provisions, pertaining to the capitulation of the city of Manila and its bay and harbor, but which is also an inseparable part and parcel of the stipulations and processes by which a treaty of peace is to be effected.

The second of these features presents a case of the military capitulation of a certain defined territory, to be occupied and held by the United States "pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines." This stipulation is sometimes ignored and some-

times relied upon by the Spanish Commissioners to meet the various exigencies of their argument.

The Spanish Commissioners are entirely correct in treating this particular stipulation of the Protocol (as they do in one branch of their argument) as a military convention providing for a capitulation, and in citing (as they do) the laws of war applicable to military occupancy of a conquered or surrendered portion of the territory of one of the belligerents. If, therefore, as the American Commissioners contend, the acts complained of, and for which Spain now demands reparation, were rightful acts under the Protocol, and could rightfully have been done by that Government if no hostilities whatever had been conducted against Manila after its signature, the entire contention of Spain for reparation on account of those acts fails. The Protocol, as respects the occupation by the United States of the city of Manila and its bay and harbor, was, as we have observed, a military convention for the capitulation of certain territory therein specifically defined. When executed by the United States taking possession it presented a case of military occupation of that certain defined territory, and vested in that Government all the rights which the laws of war give to a military occupancy. This capitulation was general in its character and terms. It comprehended the defined territory and all that it contained, including the forts, the munitions of war, the barracks. It included everything and every person left in the city by Spain. It included the garrison for that reason. Under the special circumstances of the case the surrender of the garrison was necessarily contemplated by the Protocol. The city was closely besieged on the land side by the insurgents. It was in extremity for provisions and the insurgents controlled the water supply. The Spanish forces had been unable to raise the siege, and therefore could not escape from the city on the land side. The city was blockaded by the American fleet; the fleet of Spain had been destroyed and there was no escape for her troops by water. The conditions were such that even if an escape could have been effected by land or sea, the forces of Spain would have had no base whatever for any military operations. So clearly was this the situation that the Spanish Commander-in-Chief fled from the city shortly before it was attacked, took refuge on a neutral man-of-war, and was conveyed by it to Hong Kong. Had it been intended that the garrison should be permitted to depart from the capitulated city, the usual provision would have been made that it should march out with its arms and with the honors of war. Containing no such provision, the exaction that the Spanish troops should surrender to the occupying power was as justifiable and legal under the Protocol as was the taking possession by that power of the forts, barracks and munitions of war. Consequently, no rightful claim whatever against the United States can be made that afterward it refused to permit the capitulated army to resume its arms and proceed beyond the limits of the capitulated territory as an organized military force for the purpose of suppressing the Tagalo insurrection, or for any military purpose whatsoever. That this has always been the position of the United States upon this question plainly appears from the diplomatic correspondence between the two Governments, and particularly in the letter of the Secretary of State to Mr. Cambon dated September 16, 1898. The argument which would sustain the right of Spain to the release of her army would, with equal cogency, support a claim on her part to have delivered up to her for the same purpose a ship of war that might have been included in the capitulation, and all the munitions of war which came into the possession of the United States under and by virtue of its stipulated right of occupancy. In all cases where, pending war, a certain defined part of the territory of one of the belligerents is by the terms of a military convention, agreed to be put in the military occupation and possession of the other belligerent, the sovereignty of the occupying party (the United States in the present instance) displaces or suspends the sovereignty of the other belligerent and becomes for the purposes of the military occupation a substitute for it.

It is not necessary to multiply citations of the many authorities which sustain this proposition. General Halleck's work on International Law has been invoked by the Spanish Commissioners and the citations in this paper will be limited to that work, observing that they are made from the chapter which treats of the rights of military occupation during war as contradistinguished from the rights of a complete conquest.

"Capitulations are agreements entered into by a commanding officer for the surrender of his army, or by the governor of a town, or a fortress, or particular district of country, to surrender it into the hands of the enemy."

(Halleck, vol. II., p. 319.)

"It follows, then, that the rights of military occupation extend over the enemy's territory only so far as the inhabitants are vanquished or reduced to submission to the rule of the conqueror. Thus, if a fort, town, city, harbor, island, province, or particular section of country belonging to one belligerent, is forced to submit to the arms of the other, such place or territory instantly becomes a conquest, and is sub-

ject to the laws which the conqueror may impose on it; although he has not yet acquired the plenum dominium et utile, he has the temporary right of possession and government."

(Halleck, vol. II., p. 434.)

To consider more specifically the claims advanced by the Spanish Commissioners:

The first is, that Spain "is entitled to the immediate delivery of the place (Manila) to the Spanish Government."

To do this would contravene the provisions of the Protocol by which it is agreed that "the United States will occupy and hold the city, bay and harbor of Manila pending the conclusion of a treaty of peace," which treaty the two Commissions have been negotiating ever since October 1, 1898. They are negotiating under the Protocol. That instrument is an entirety. Neither party, having entered into it and continued the negotiations for which it provides to a date more than two months after the acts were done of which Spain now complains, can now allege such acts as grounds for the rejection of the obligations of that instrument.

If any right of repudiation ever existed, it should have been asserted in due time as against the entire instrument and all of its provisions. This has never been attempted. On the contrary, the contracting parties have proceeded to negotiate, agree and perform under the requirements of that instrument.

By so doing Spain has waived the alleged breaches of the Protocol which she now advances.

The second demand is for the immediate release of the garrison of Manila. We show in another place that this garrison was, under the facts and circumstances, necessarily included in the capitulation provided for by the Protocol.

The third demand is for the return to the Spanish Government of all funds and public property taken by the American army since its occupation of the place (Manila) and all taxes of every kind collected or to be collected.

We have maintained in another portion of this paper that the occupation of Manila is justly referable to the Protocol; that that instrument is a military capitulation; that the effect of the occupancy by the United States was to suspend the sovereignty of Spain in the territory so occupied, and to substitute for the purposes of military occupation the sovereignty of the United States. It follows upon principle and authority from these considerations that the United States had the right to take the public property, and to collect the taxes demanded, and has the right to retain the same.

"Political laws, as a general rule, are suspended during the military occupation of a conquered territory. The political connection between the people of such territory and the State to which they belong is not entirely severed, but is interrupted or suspended so long as the occupation continues. Their lands and immovable property are, therefore, not subject to the taxes, rents, etc., usually paid to the former sovereign. These, as we have said elsewhere, belong of right to the conqueror, and he may demand and receive their payment to himself. They are a part of the spoils of war, and the people of the captured province or town can no more pay them to the former government than they can contribute funds or military munitions to assist that government to prosecute the war. To do so would be a breach of the implied conditions under which the people of a conquered territory are allowed to enjoy their private property, and to pursue their ordinary occupations, and would render the offender liable to punishment. They are subject to the laws of the conqueror, and not to the orders of the displaced government. Of lands and immovable property belonging to the conquered state, the conqueror has, by the rights of war, acquired the use so long as he holds them. The fruits, rents and profits are therefore his, and he may lawfully claim and receive them. Any contracts or agreements, however, which he may make with individuals farming out such property, will continue only so long as he retains control of them, and will cease on their restoration to, or recovery by, their former owner."

(Halleck, vol. II., p. 437.)

"During the war of 1812 the city and harbor of Castine, a port of the United States, was taken and occupied by the British forces: their commander proceeded to levy and collect customs duties. The question of his right to do so and the suspension of the sovereignty of the United States was afterward adjudicated by the Supreme Court.

"By the conquest and military occupation of Castine," says the Supreme Court, "the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such

only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them; for where there is no protection or allegiance or sovereignty there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subject to such duties only as the British Government chose to require. Such goods were in no correct sense imported into the United States.'"

(Halleck, vol. II., p. 446-447.)

'The moneys derived from these sources may be used for the support of the government of the conquered territory, or for the expenses of the war.'

(Halleck, vol. II., p. 447.)

"Those who are permitted to hold commercial intercourse with such territory, whether they be subjects of the conqueror, or of foreign States, must conform to the regulations, and pay the duties established by the conquering power; and, in case of conquest by the United States, the President, in the absence of legislative enactments, exercises this power."

(Halleck, vol. II., p. 446.)

"We will next consider the effect of a military occupation of a State upon debts owing to its government. Does such conquest of the State carry with it the incorporeal rights of the State, such as debts, etc.? In other words, do these rights so attach themselves to the territory that the military possession of the latter carries with it the right to possess the former? There are two distinct cases here to be considered: First, where the imperium of the conqueror is established over the whole State (*victoria universalis*); and, second, where it is established over only a part, as the capital, a province, or a colony (*victoria particularis*). As has already been stated, all rights of military occupation arise from actual possession, and not from constructive conquests; they are *de facto*, and not *de jure* rights. Hence, by conquest of a part of a country, the government of that country, or the State, is not in the possession of the conqueror, and he, therefore, cannot claim the incorporeal rights which attach to the whole country as a State. But, by the military possession of a part, he will acquire the same claim to the incorporeal rights which attach to that part, as he would, by the military occupation of the whole, acquire to those which attach to the whole. We must also distinguish with respect to the situations of the debts, or rather the locality of the debtors from whom they are owing, whether in the conquered country, in that of the conqueror, or in that of a neutral. If situated in the conquered territory, or in that of the conqueror, there is no doubt but that the conqueror may, by the rights of military occupation, enforce the collection of debts actually due to the displaced government, for the *de facto* government has, in this respect, all the powers of that which preceded it."

(Halleck, vol. II., p. 461.)

In other particulars Spain has not only waived any right to insist that the hostilities at Manila were in violation of the Protocol, but has acted upon the assumption that they were not such acts of violation.

On August 15, 1898, the French Ambassador, acting for Spain, in a letter of that date, addressed to the Secretary of State, inquired as follows: "May the postal service by Spanish steamers be re-established between Spain and Cuba, Porto Rico, Philippines?"

"Will Spanish merchants be permitted to send supplies in Spanish bottoms to Cuba, Porto Rico, Philippines?"

To these inquiries the Department of State answered by letter dated August 17, 1898, that:

"1. This Government will interpose no obstacle to the re-establishment of the postal service by Spanish steamers between Spain on the one side and Cuba, Porto Rico and the Philippines on the other.

"2. The United States will not object to the importation of supplies in Spanish bottoms to Cuba and the Philippines, but it has been decided to reserve the importation of supplies from the United States to Porto Rico to American vessels."

Though it is probable that both of these communications were written before notice of the capture of Manila had been received, yet it is believed that Spain has, down to the present time, availed herself of the privileges thus solicited and granted.

On August 29, 1898, the French Ambassador, acting for Spain, by letter of that date, addressed to the Secretary of State, suggested that "the Spanish troops, whom the capitulation of the city of Manila has reduced to inaction, might be placed at once at the disposal of Spain, who would use them for the defence of the Islands against the insurgents.

"The Minister of State at Madrid thinks that, if the United States Government sees any objection to this arrangement, it will, at least, have no reason to oppose the dispatch of troops directly from the Peninsula to the Philippines."

To this letter the Department of State made answer under date of September 5, 1898, and observed, among other things:

"In your informal note of the 29th ultimo it is stated that the Spanish Government suggests that, for the purpose of checking insurgent hostilities, the Spanish troops now held as prisoners of war by the American forces may be placed at the disposal of Spain, to be used against the insurgents; or, if this be objected to, that the Spanish Government may be allowed to send troops from the Peninsula to the Philippines. It can scarcely be expected that this Government would even consider the question of adopting the first alternative, in view of the fact that for some time before the surrender of Manila the Spanish forces in that city were besieged by the insurgents by land, while the port was blockaded by the forces of the United States by sea."

It seems impossible to conceive that the correspondence from which the above quotations have been made could have taken place except upon the basis of the opinion then entertained both by the United States and Spain, that the possession by the former power of the City of Manila, and the surrender to it of the Spanish forces were either lawful ab initio, or had become lawful by acquiescence and waiver by Spain, and that nothing had been done or required by the United States that was not warranted by the terms of the Protocol respecting the occupation by that Government of the city, harbor and bay of Manila.

And on the 11th day of September, 1898, the Ambassador of France, acting for Spain, in a letter of that date to the Secretary of State, distinctly stated that "the Spanish Government is of opinion that the occupation by the American forces of the city, bay and harbor of Manila must be considered in virtue of the Protocol of August 12, and not in virtue of what was agreed to in the capitulation of the 14th of the same month, which is absolutely null by reason of its having been concluded after the belligerents had signed an agreement declaring the hostilities to be suspended."

Considering together these requests and concessions, and particularly the explicit admission above quoted, it seems a feat of forensic and dialectic hardihood to assert now that the military occupation by the United States of the City of Manila is void under the Protocol, and that, for that reason, the city ought to be delivered up to Spain, its garrison liberated, its forts, barracks and munitions returned, the moneys collected paid back to Spain, and the United States to be mulcted in damages for the military operations of the insurgents.

And, considering from altogether another point of view the claim that, since Manila was actually captured a few hours after the Protocol was signed on the other side of the globe instead of a few hours before, it should be returned, the thought might occur to a just and impartial mind to remember why it was not captured earlier. The world knows that the attack was only delayed to protect the city and its Spanish inhabitants from the dreaded vengeance of the insurgents. It would be extraordinary if this act of humanity should now be claimed by the beneficiary as the sole reason for depriving the benefactor of his victory.

It might further occur to a just and impartial mind that the General and the Admiral commanding, to whom that humane delay was due, were entitled to a more generous recognition of perfectly well known facts than is implied in the statements of the Spanish Commissioners that "in spite of this (the signature of the Protocol) General Merritt and the Admiral of the fleet demanded the surrender of the place, etc. . . . opened fire, . . . unnecessarily causing a considerable number of losses to the Spanish forces;" and again that "General Merritt and the Admiral of the squadron may not be personally responsible for the blood they unnecessarily shed on the 13th, if they had no official notice then of the Protocol which had been signed on the previous day in Washington." The American Commissioners have too high an estimate of the chivalric honor of the Spanish people to accept that as the final record Spain would wish to make of this incident.

The American Commissioners for the various reasons hereinbefore stated are constrained to reject the several demands embodied in the "proposition" to which the present paper is an answer.

True copy:

JOHN B. MOORE.

Protocol No. 14.

CONFERENCE

of November 16, 1898.

The conference having been postponed at the request of the Spanish Commissioners, in order that they might have an opportunity to prepare a reply to the paper presented by the American Commissioners at the last session, it was decided to meet on the 16th of November, at two o'clock p. m., at which hour there were

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The Spanish Commissioner presented their answer, copy and translation of which are annexed to this protocol, to the American memorandum relating to the Philippine Islands, and in so doing the President of the Spanish Commission stated that the document, besides being an answer to the American memorandum, was also a memorandum in support of the last proposition presented by the Spanish Commissioners; and he called attention to the concluding part, wherein a motion or proposition was made with reference to the contingency that the American Commissioners should think that they must insist upon their former proposal on the Philippines.

The American Commissioners asked that the final part of the memorandum, to which the President of the Spanish Commission referred, be read, and it was orally translated into English by their interpreter.

The American Commissioners moved that, in order that the whole paper might be carefully translated and attentively

Protocolo No. 14.

CONFERENCIA

Del 16 de Noviembre de 1898.

Los Comisarios, espanoles en virtud de lo acordado en la sesion anterior respecto del aplazamiento de la proxima conferencia para una fecha posterior a la fijada, solicitaron una prorroga para presentar su contestacion al Memorandum que en la ultima sesion presentaron los Comisarios americanos y habiendose fijado de comun acuerdo el dia 16 a las 2 p. m. para la reunion de ambas Comisiones, se hallen en dicho dia y hora.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

Los Comisarios espanoles presentan la contestacion al Memorandum americano, que es anexa al acta presente, relativa a las Islas Filipinas, y al hacerlo, el Presidente de la Comision espanola, manifiesta que dicho documento a la vez que contesta al americano, es asimismo un Memorandum en apoyo de la ultima proposicion presentada por los Comisarios espanoles, y llama la atencion sobre su ultima parte en que se hace una mocion o proposicion para el caso en que los Comisarios americanos crean deber insistir en su anterior proposicion sobre Filipinas.

Los Comisarios americanos piden que sea leida la ultima parte del Memorandum a que se refiere el Presidente de la Comision espanola, y esta es vertida verbalment al ingles por su interprete.

Los Comisarios americanos manifiestan que considerando que es necesario traducir con esmero y enterarse atentamente de

examined, the conference be adjourned till Saturday, November 19, at two o'clock p. m., without prejudice to asking for a postponement if necessary.

The Spanish Commissioners expressed their assent to this motion, and it was therefore decided that the next conference should be held on Saturday, the 19th instant, at two o'clock p. m.

Signed:

WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

dicho documento, proponen el aplazamiento de la sesion hasta el sabado a las 2 de la tarde, sin perjuicio de pedir una prorroga si lo estimasen necesario.

Los Comisarios espanoles manifiestan su asentimiento, y queda por tanto fijada la proxima conferencia para el sabado 19 a las 2 p. m.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

Annex to Protocol No. 14.

COMISION

Para la Negociacion de la Paz con los Estados Unidos.

Presentado en la Sesion del Dia 16 De Noviembre de 1898.

(14 Conferencia.)

El ultimo escrito presentado por la Comision americana tiene un doble objeto. Por una parte es el Memorandum que presenta en apoyo de su proposicion de 3 de Octubre ultimo, pidiendo la cesion de las Ilas Filipinas a los Estados Unidos. Y por la otra es la exposicion de las razones que tiene la Comision americana para no admitir la proposicion espanola de 4 de este mes, en que la invitaba a que presentase una cuya objeto fuera el cumplimiento de lo convenido en los Articulos 3 y 6 del Protocolo de Washington.

Por lo que hace al primer objeto sobre que versa el Memorandum americano, la Comision espanola se dedicara primeramente en este a replicar a su contenido. Y por lo que hace a la segunda parte, aquella insistira en la forma de Memorandum reglamentario en la exposicion de las razones que abonan su proposicion rechazada.

Replica al Memorandum americano.

Razones de metodo y el deseo de reducir las proporciones de este escrito inclinan a los Comisarios espanoles a ocuparse primeramente del punta relativo a las deudas hipotecarias de las colonias de Espana, que, aunque de capital importancia, no hubieran vuelto a controvertir en esta parte de la discusion del tratado, si no apareciera nuevamente promovido por la Comision americana en el ultimo parrafo de su proposicion, pidiendo la cesion del Archipelago Filipino.

Reconoce la Comision espanola la dificultad que siente para contestar a esta parte del Memorandum americano, debida esta dificultad a los graves errores de hecho de que aquella esta sembrada, y tambien a las extranas doctrinas juridicas que alli campean.

Ante to do necesita la Comision espanola hacer constar que en su documento no entiende haber empleado language, ni siquiera frases impropias de una discusion diplomatica. Celosa de las consideraciones a que tiene derecho emplea por guardar religiosamente las que corresponden a los demas, y, en sus documentos evita con el mayor cuidado toda frase que pueda ser personalmente desagradable a quien vaya dirigida, y con mucha mas razon, las que pudieran reputarse ofensivas a quienes estan, y tienen derecho a estar, al amparo de las personas con quienes los Comisarios espanoles tengan que discutir.

Los Comisarios americanos dicen que nolaron con sorpresa que los espanoles, despues de haber aceptado provisionalmente los articulos que aquellos habian propuesto sobre Cuba y Puerto Rico, vuelven ahora a suscitar la cuestion de la deuda cubana, planteando de nuevo un tema que bajo ciertas reservas habia sido terminantemente abandonado. Y no satisfechos con tan retundas afirmaciones anandieron que la Comision espanola en su contestacion escrita presentada en la sesion de 26 de Octubre, habia retirado sus observaciones anteriores a los articulos de la Comision americana.

Por lo que hace a esta suquesta retirada, invitamos a nuestros dignos colegas de America a que, buscando con todo detenimiento las frases de nuestra contestacion escrita, en que aquella conste, se sirvan citarias, pues entre tanto y siempre nosotros hemos de afirmar de un modo rotundo, que en nuestro documento no existen tales frases, resultando de el por lo contrario que nada teniamos que retirar, puesto que sosteniamos nuestras afirmaciones, aunque subordinando su sostenimiento en lo futuro a las conveniencias de Espana. En efecto, como prueba de lo que acabamos de decir y como suficiente contestacion a las frases de la Comision americana, basta transcribir aquellas en que consta aquella supuesta aceptacion provisional y aquel terminante abandono del tema sobre la mencionada deuda. "Los Comisarios espanoles contestan "a la sobredicha pregunta (que es la que por escrito les habia hecho la Comision "americana en la reunion del dia 24 Octubre) y dicen que, afirmando sus convicciones "de que con arreglo a Derecho, las obligaciones coloniales de Cuba y Puerto Rico "deben pasar con estas islas y su soberania, no rehusan tomar en consideracion cual- "quier otro articulo relativo a Cuba y Puerto Rico que no contenga la clausula de

"asumir las cargas por los Estados Unidos o por Cuba o por ambos (estas eran las "propias palabras de la pregunta a que contestaban), subordinando la definitiva "aprobacion de tal articulo a la de los demas que hayan de formar la totalidad del "Tratado, etc." Y entre las razones que por escrito consignaron para dar esta contestacion, esta la que alli se expresa con las siguientes frases: "Considerando que "no habiendo de elaborarse este tratado como nunca se ha elaborado ni puede elaborarse ninguno, con el unico criterio de la rigurosa justicia que cada una de las "partes pueda entender que le asista, sino tambien con el de la conveniencia de cada "meramente juridico, y que por consiguiente sobre la cuestion relativa a la deuda de "Cuba los Comisarios espanoles, que entienden que el rigor del Derecho la resuelve a "su favor, tienen el deber y estan dispuestos a cumplirlo, de moderar este rigor por "las conveniencias que para Espana puedan surgir de otras estipulaciones del tratado, "que sin ser perjudiciales a los Estados Unidos, puedan ser favorables a Espana."

Parece bien claro que el supuesto abandono de que ahora se habla en el Memorandum americano y la supuesta aceptacion de los articulos relativos a Cuba y Puerto Rico, estaba limitada al caso en que la Comision espanola entendiera que en los demas que se fueran discutiendo y aprobando, hubiese para Espana ventajas que, a su juicio, la compensaran de un sacrificio mayor o menor de su derecho sobre las deudas, puesto que, si tales ventajas no se ofrecian, no tendria la Comision espanola razon para hacer ninguno; y por lo tanto, claro es que podria insistir en el reconocimiento de su derecho.

Pues bien que ventajas desde entonces se han ofrecido a Espana, hasta este momento, en el curso de las conferencias?

Desde aquella fecha los trabajos del tratado no adelantaron mas que un paso, y este ha consistido en pedir a Espana, sin alegar rason alguna en pro de tal peticion cuando se hizo, que ceda a los Estados Unidos el Archipiélago de Filipinas. Entiende la Comision americana que esta cesion es una ventaja para Espana? Sus Comisionados no se sorprenderian al oir una contestacion en sentido afirmativo, que ya hacen prever ciertas frases consignadas en el Memorandum a que contestan. No necesitan decir que no participan de esa opinion.

Hubiera, pues, estado la Comision espanola en su derecho, volviendo a insistir no de un modo incidental, sino directo y principal, en sus reclamaciones sobre la transmision de las deudas y obligaciones coloniales. No lo han hecho, ni se proponen hacerlo ahora, mas esto no ha obstado ni obsta a que no deje pasar en silencio supuestos y afirmaciones, siquiera para que no llegue un dia en que se diga que habian sido por ella consentidas, porque no las habia controvertido, negandolas expresamente su asentimiento.

Afirma la Comision americana Espana contrajo (no dice que haya invertido la deuda anteriormente contralada) la mayor parte de la deuda hipotecaria de Cuba "en un esfuerzo, primero para subyugar a los insurrectos cubanos, y luego para oponerse a los Estados Unidos, y discutiendo sobre el mismo tema, anade, que "no se ha negado que parte del importe de estos empréstitos se invirtió directamente en hacer "la guerra a los Estados Unidos." Para hacer tales afirmaciones es indispensable suponer que se ignoran las fechas de la creacion de tales deudas. La una fue emitida por Real Decreto de 10 de Mayo de 1886, es decir, ocho años despues de establecida la paz en Cuba, y nueve antes de que, por las sugerencias y medios que ya son del dominio publico, hubiera vuelto a perturbarse. La segunda emision se hizo por Real Decreto de 27 de Setiembre de 1890, es decir, doce años despues que reinaba una paz completa en Cuba y se hallaba esta isla en el apogeo de su prosperidad, y cinco años antes que hubiese comenzado su desolacion por la nueva rebelion que alli, mas o menos espontaneamente surgió. Y en los dos Decretos se dice ademas cuales eran las causas que provocaban estas emisiones, y los gastos en cuya satisfaccion se habia de invertir su importe, figurando entre los principales el pago de los déficit de los presupuestos anteriores y posteriores de la isla, los cuales bien sabido es que eran debidos a la gran rebaja que en sus impuestos habia hecho la Metropoli.

Querra decirse que esta, por un don sobrenatural de adivinacion, sabia en 1886 y 1890 que en 1895 habia de reproducirse la insurreccion de Cuba, y en 1898 los Estados Unidos le habian de dispensar su proteccion armada? Pues, solamente en tal hipotesis podria admitirse la exactitud de las frases que se leen en el Memorandum americano. Y por lo que hace a los gastos que a Espana ocasiono la guerra de los Estados Unidos, sin duda su Comision ignora que en 20 de Abril de este año, en que comenzaron las hostilidades, el Tesoro espanol aun estaba realizando las operaciones que, en forma de obligaciones con la garantia especial de las Aduanas de la Peninsula, habia acordado hacer en 1896 y 1897 por mil millones de pesetas, y otra por doscientos veinte y tres millones de pesetas, acordada en 2 de Abril de 1898 con la garantia especial de las rentas del tabaco y timbre del Estado y la del impuesto de consumos de Espana, y que, en fin, para la atencion especial de la guerra con los Estados Unidos, se habia acordado ademas emitir por Real Decreto de 31 de Mayo de este año, deuda perpetua interior al 4 % por valor de mil millones de pesetas, de las cuales fueron inmediatamente negociadas 806,785,000. Despues de estos datos, es de suponer que la Comision americana no habra de insistir en la afirmacion tan

sin fundamento aventurada en su Memorandum, por comprender que los gastos de la guerra con los Estados Unidos nada tienen que ver con la deuda hipotecaria colonial de Cuba.

Una vez mas la Comision americana expone en su ultimo Memorandum la extrana teoria de que las colonias espanolas no tienen obligacion de pagar la deuda contratada por la Metropoli para sofocar la rebellon de pocos o muchos de sus habitantes. Pero esta vez llegan hasta el punto de poner tan singular teoria al amparo del sentido comun, afirmando que la contraria es una amenaza para la libertad y la civilizacion.

Ah! si los colonos y los ciudadanos de su Gran Republica hubiesen alegado para justificar una rebeldia, o en lo futuro alegasen en caso igual, de que aquel poderoso Estado no esta ciertamente exento, una teoria semejante, la hubiera admitido y la admitira el Gobierno americano? Lo que no el sentido comun, sino el sentido moral reprueba, es que se intente poner toda rebellon contra los poderes legitimos al amparo de la libertad y de la civilizacion. Era o no Espana soberana legitima de Cuba cuando gurgio la primera insurreccion y durante toda la segunda? Se ha atrevido nadie a negar ni a poner en duda siquiera, la soberania de Espana sobre aquella isla en el tiempo a que nos estamos refiriendo? No fueron los mismos Estados Unidos y su Gobierno los que un dia y otro dia le reclamaron que la sofocase, sin excluir el medio de las armas, restableciendo lo mas pronto posible la paz en su colonia? Pues accediendo Espana a estas instancias quien, incluso los Estados Unidos, puede negar la legitimidad de los gastos que hizo al satisfacerlas?

Teoria semejante que, por los respetos que la Comision espanola, viene guardando y tiene el deber de guardar, no califica, como seguramente la calificarian todos los poderes constituidos de la tierra, no puede sostenerse a la faz de los hombres, sino partiendo del supuesto de que el poder metropolitano era ilegítimo y su soberania una arbitrariedad del despotismo. Y concreta y cenidamente se califica asi a la Corona de Espana por su dominacion en Cuba hasta la celebracion del Protocolo de Washington? Puede, sobre todo, calificarla asi el Estado que, sin cesar, ha solicitado la accion de esa soberania para dominar a los que contra ella se habian levantado en la isla con las armas en la mano?

Pasaremos a otro asunto, ya que este es muy delicado para tratarlo con calma y serenidad en una discusion diplomatica en que se intenta controvertirlo.

En el Memorandum a que estamos contestando, se asienta la singular afirmacion de que la hipoteca constituida en las dos sobredichas emisiones, puede llamarse mas propriamente una garantia subsidiaria, y que quien esta principalmente obligada al pago es la nacion espanola. Sin duda la Comision americana, al hacer tal afirmacion, no tenia a la vista el articulo 2° del Real Decreto de 10 de Marzo de 1886, acordando la emision de 1,240,000 billetes hipotecarios de la Isla de Cuba, ni el parrafo tambien segundo del articulo igualmente segundo del Real Decreto de 27 de Setiembre de 1890, acordando la emision de 1,750,000 billetes hipotecarios tambien de la misma isla. Los dos dicen literalmente lo mismo, y bastara por lo tanto que transcribamos uno de ellos. Dice asi: "Los nuevos billetes tendran la garantia especial de las rentas de Aduanas, sello y timbre, de la Isla de Cuba, la de las contribuciones directas e indirectas que alli existan o quedan establecerse en lo sucesivo, y la general de la nacion espanola. Estaran exentos de todo impuesto ordinario y extraordinario, etc."

Tampoco ha debido ver la Comision americana ninguno de los titulos emitidos de estas deudas, que se hallan por todas partes esparcidos incluso en Cuba y en las manos de terceros y particulares duenos; si los hubiera visto, habria leido en ellos lo siguiente: "Garantia especial de las rentas de Aduanas, sello y timbre de la Isla de Cuba, la de las contribuciones directas e indirectas que alli existan o puedan establecerse en lo sucesivo y la general de la nacion espanola." "El Banco hispano-colonial percibira por medio de sus delegados en la Isla de Cuba o recibira en Barcelona por conducto del Banco espanol de la Habana, el producto de las Aduanas de la misma, reteniendose anticipado y diariamente lo necesario, segun la tabla al dorso, para aplicarlo en cada trimestre al pago de intereses y amortizaciones."

Si despues de esto la Comision americana continua entendiendo que esta deuda no se emitio como hipotecaria y que la hipoteca no consistio en las rentas de las Aduanas de Cuba y sus demas impuestos, y que estas rentas no fueron las que se senalaron principalmente y en primer lugar, y por lo tanto antes que el Tesoro de la Peninsula, para el pago de los intereses y amortizaciones de esta deuda, nada mas tenemos que decir. No sabemos demostrar la evidencia.

Por lo que hace a los tenedores de estos titulos y a la severidad que entedemos es injustificada, con que aquellos son tratados en el Memorandum americano, no es Espana la que tiene el deber de defenderlos. Cuando a su noticia llegue el juicio que sobre ellos se emite, es de suponer que por si mismos se defenderan, porque despues de todo, no necesitan hacer grandes esfuerzos para demostrar la justicia de su causa.

Por lo que a Espana toca, y con esto su Comision procede a contestar categoricamente a las preguntas que se formulan en el Memorandum americano, le basta defender la legitimidad de sus actos y el perfecto derecho con que creo aquella deuda y establecio su hipoteca; y por consiguiente, el estricto que tiene para no pagar los

intereses y amortización de la misma, sino cuando se le pruebe la insuficiencia de las rentas hipotecadas con que aquellos deben ser primeramente satisfechos.

Si los que tales rentas tengan en su poder, quieren o no cumplir la obligación sobre ellas constituida, es cosa que quedara bajo su responsabilidad, questo que España no tiene medios de hacerles cumplir esta obligación, ni por otra parte tiene ella para con los acreedores mas deberes que los que honradamente ha venido hasta ahora cumpliendo. Pero España, vuelve a decirlo su Comisión (y es lo unico que textualmente ha dicho en su documento anterior, aunque en otro sentido aparezca en el Memorandum americano) no quede prestarse en este tratado con los Estados Unidos, ni en otro alguno con cualquier potencia, a hacer ni declarar en su propio nombre, nada que manifieste o siquiera implique que ella misma pone en duda y mucho menos desconoce, ni aun voluntariamente merma por lo que a ella toca, los derechos hipotecarios de los tenedores de aquellas deudas. No tiene medios eficaces para que los que hayan de ser tenedores de las hipotecas respeten tales derechos. Por esto no los emplea; si los tuviese, ya que no por estricta justicia a lo menos por un deber moral, los emplearía, ajustandose así a los sentimientos de la probidad pública y privada.

Crean, pues, los Comisarios españoles haber contestado bien categoricamente a las preguntas que sobre este particular se les dirigen en el Memorandum americano, y despues de esto pasan a ocuparse del principal punto tratado en aquel Memorandum y que se refiere a la soberanía del Archipiélago Filipino.

Segun el Memorandum americano se funda la cesion del Archipiélago que se pide a España, no en que tal cesion se haya convenido en el artículo 3 del Protocolo, como se convino en el 2.º de la Isla de Puerto Rico, sino en que, segun aquella Comisión, entre los asuntos relativos a las Islas Filipinas que en el artículo sobredicho se depusieron a la libre resolución de la Conferencia de Paris, esta el que tiene por objeto la cesion por España de la soberanía en aquellas islas a los Estados Unidos de America.

La Comisión española sostiene que lejos de haberse encomendado tan grave asunto a la Conferencia de Paris, asunto que sin duda seria mas importante que todos los que esta llamada a discutir, el artículo 3 del Protocolo descansa sobre el supuesto de que la soberanía del Archipiélago habia de continuar siendo de España.

La Comisión americana busca el fundamento de su tesis en la interpretación de las frases de la citada cláusula 3, y ademas en las negociaciones que la prepararon y terminaron con su aceptación.

Examinaremos con fria serenidad los razonamientos de esta tesis. Dice la Comisión americana que es un principio de Derecho que "cuando el resultado de negociaciones se ha comprendido en un escrito cerrado, los terminos de este acuerdo deben definir los derechos de las partes."

La Comisión española admite esta regla de la interpretación de los tratados. Si tiene como fundamento indispensable, el de que los terminos del acuerdo sean claros y precisos y de indudable y fijo sentido, porque, en tal caso, debe entenderse que las diferencias que durante las negociaciones hubiera habido entre los Estados contratantes, quedaron resueltas por el acuerdo claro, preciso, y de fijo sentido en que conviniere. Mas es este el caso sobre que discuten al presente ambas Comisiones?

Antes de contestar a esta pregunta, entienda la Comisión española, que es bueno transcribir, una vez mas, el texto del artículo 3 del Protocolo, literal y fielmente traducido del original frances. Dice así: "Los Estados Unidos ocuparan la ciudad, puerto y bahía de Manila en espera de la conclusion de un tratado de paz que debiera determinar la intervencion (controle), la disposicion y el gobierno de las Filipinas."

No sabe la Comisión española si la americana ignora que, al recibirse por el Gobierno de Madrid el despacho del Senor Secretario de Estado de Washington, en fecha 3 de Julio, comunicandole las tres condiciones con cuya aceptación por España, estaban los Estados Unidos dispuestos a hacer la paz y la tercera de las cuales era la que, sin la menor alteracion se transcribió despues en el Protocolo, formando su cláusula 3, dirigió un despacho telegrafico al Senor Embajador de Francia en Washington, Mr. Cambon, el 1 de Agosto, en el que sobre este punto le declara literalmente lo siguiente: "El tercer punto en que se determina la forma de disponer de las Islas Filipinas parese faltar de precision a este Gobierno. Ha suplido (este Gobierno se entiende) las deficiencias que en el se advierten, suponiendo que no hay cuestion respecto de la soberanía permanente de España en aquel Archipiélago, y que la ocupacion temporal de Manila, su puerto y su bahía, por el Gobierno federal, solamente ha de durar el espacio necesario para un acuerdo entre ambos paises sobre reformas administrativas." Tenemos a disposicion de la Comisión americana este despacho, por si quisiera leerlo y estudiarlo por si misma. Mr. Cambon, recibido que hubo este documento, tuvo con el Senor Presidente de la Republica americana una conferencia, el dia 3, y que, respecto al particular de que la Comisión española se ocupa en este momento, aparece referida en el despacho de dicho Senor Embajador de 4 de Agosto, en los terminos siguientes: "Aproveche esta declaracion para rogar al Presidente que tuviera la bondad de precisar sus intenciones en lo posible en lo que se refiere a Filipinas. En este punto, le dije, esta

la contestacion, del Gobierno Federal redactada en terminos que pueden prestarse a todas las pretensiones de parte de los Estados Unidos, y por consiguiente, a todos los temores de Espana respecto de su soberania." El Presidente le contesto como luego se dira. Mas el Gobierno espanol, a pesar de las palabras de aquel Alto Magistrado, insistio, en su despacho de 7 de Agosto, en las dudas que le ofrecia el sentido de la clausula 3. Inutil insistencia. El Gobierno americano, in entonces, ni antes, ni despues, se presto a manifestar concretamente su pensamiento, envuelto en las frases de controle, disposicion y gobierno de Filipinas, de que se habia de ocupar la Conferencia de Paris. Ahora es cuando por primera vez entra en esta explicacion. En el Memorandum, a que esta contestando la Comision espanola, es donde la consigna la americana. Dice: "Claramente la palabra control (en ingles) no fue aqui aplicado en el sentido de register (investigacion o inspeccion) sino en su sentido mas amplio de autoridad o mando. . . . que palabra podia ser mas amplia que disposicion, que practicamente tiene la misma significacion en frances y en ingles? . . . tenemos por tanto en estas dos palabras 'la autoridad sobre' dominio de," final y de flutiva explicacion de la materia en cuestion. ? Que es gobierno sino el derecho de administracion o de ejercer soberania, la direccion, el manejo politico de un Estado? Cualquiera de estos terminos implica la facultad o poder de intervenir con soberania. Juntos tienen el mas amplio alcance para tratar de todos los poderes, gubernamental, territorial o administrativo."

La explicacion, si no parece oportuna por lo tardia, tampoco parece satisfactoria. Desde luego se ocurre que si con el proposito de que tal cosa significasen aquellas palabras se empeño el Gobierno americano en sostenerlas, aunque sin explicarias, a pesar de las diversas veces en que así se le pidio ? porque razon no tuvo entonces la fran queza que ostenta ahora su Comision ? porque en vez de decir que la conferencia de Paris habia de determinar la intervencion, la disposicion y el gobierno de las Islas Filipinas, no dijo que dicha conferencia habia de resolver sobre su soberania, acordando o no, su cesion a los Estados Unidos, como ahora la reclaman sus Comisionados, fundandose en que en aquellas frases esta tambien contenida esta cesion? ?No hubiera sido esto mas breve, mas explicito y de mayor franqueza?

Pero ¿es admisible la interpretacion que ahora fuera de saxon pretenden dar aquellos a las sobriedichas frases? Dicen que la palabra control (controle en frances) no puede tomarse en el sentido de register (investigacion o inspeccion) sino en el de autoridad o mando. Y ? porque? Porque este es el sentido mas amplio que tal palabra tiene en ingles. Mas prescindien de fijar su atencion en que el Protocolo fue redactado tambien en frances, cuyo ejemplar firmo como oficial el Senor Secretario de Estado de Washington, y que dicha palabra, en frances, no significa semejante cosa, sino investigacion o inspeccion, que tambien significa en ingles. Y ? como pueden dejar de reconocer los Comisarios americanos que cuando un tratado se ha redactado oficialmente en dos o mas idiomas a sus palabras no se puede dar otro sentido que el que sea comun a todos ellos?

Sostienen asimismo que la palabra disposicion significa enajenacion. No lo negamos, por mas que cuando se emplea en este sentido, es para aplicarla a las relaciones juridicas de la vida civil y privada, pues en frances la significacion mas comun y frecuente de tal palabra es la de "distribucion segun un orden cierto y determinado."

Afirman que la palabra gobierno significa el derecho de administrar o de ejercer soberania, y aunque tal sentido puede admitirse, tampoco puede rechazarse el de la "manera de gobernar" o la "forma que tal gobierno ha de tener." Mas se uno u otro el sentido en que aquellas tres palabras fueron empleadas en la clausula 3, si no hubiera en las negociaciones datos suficientes para fijar entre tan diversos sentidos aquel en que se emplearon, es imposible que se desconozca, como se acaba de demostrar, que por lo menos no tienen en si mismos y por si solas tales palabras un sentido claro, preciso, y que no pueda ofrecer motivo a ambigüedades y dudas. Así lo demostraron ya entonces los hechos.

El Gobierno espanol y su representante en Washington, precisamente porque no tenian esa claridad, reclamaron aunque inutilmente explicaciones, y ? quien se empeño con verdadera tenacidad en sis ener tan oscuras frases? No se negara que ha sido el Gobierno de Washington. Pues sirvanse leer los Senores Comisarios lo que sobre la interpretacion de frases semejantes, dice el inmortal Vattel, una de las mas grandes autoridades en cuanto se refiere a las relaciones internacionales de los pueblos, en su Derecho de gentes, tomo 3, pagina 197: "La duda debe resolverse contra "aquel que ha dado la ley en el tratado, porque es el, en alguna manera, quien la ha "dictado, y la falta es suya si no se ha expresado mas claramente; y entendiendo o "restringiendo la significacion de los terminos en el sentido que el es menos favorable, no se le hace ningun agravio o no se le hace mas que aquel a que ha querido "exponerse. Mas con una interpretacion contraria se correria el riesgo de convertir "terminos vagos o ambiguos en lazos para el mas debil contratante, que ha sido obligado a recibir lo que el mas fuerte ha dictado."

Acaba de indicar la Comision española que en las negociaciones hay datos suficientes para fijar el verdadero sentido de aquellas tres bien memorables palabras. Lo mismo por su parte afirma la Comision americana. Veamos cual de los dos contradictorios sentidos entienden ambas Comisiones que es el que debe preferirse.

En el Memorandum americano se asienta como base de todo el razonamiento, segun ya se ha dicho, que en la clausula 3 del Protocolo, se dejo a la libre resolucion de la Conferencia de Paris que habia de elaborar el tratado de paz el puto relativo a la soberania del Archipelago Filipino. Pues bien, ha tenido la Comision americana en cuenta, cuando hacia tan graves afirmaciones, que el Senor Secretario de Estado de Washington, en su despacho de 30 de Julio, en que comunico al Gobierno español las tres condiciones que el de los Estados Unidos le imponia para la paz y en que la tercera, como queda dicho, estaba redactada con las mismas palabras con que se lee en el Protocolo, establecia tambien el nombramiento de los Comisarios que habian de redactar el tratado de paz y fijaba y circunscribia sus facultades para este objeto? En dicho despacho se lee el parrafo siguiente: "Si las condiciones ofrecidas aqui son "aceptadas en su integridad, los Estados Unidos nombraran Comisarios que se encontraran con los igualmente autorizados por Espana con el objeto de arreglar los detalles del tratado de paz y de firmarlo en las condiciones arriba indicadas." Entiende la Comision americana que es un detalle en este tratado de paz la inesperada cesion que reclaman a Espana de un inmenso territorio que tiene mas de 300,000 kilometros cuadrados de superficie y que cuenta con mas de 9,000,000 de habitantes? Entiende que es un detalle la adquisicion de un Archipelago que para nadie es un secreto que esta llamado a ser proxicamente un factor importante para la paz del mundo?

Pero acudamos a los precedentes, como hace la Comision americana, en busca de ese sentido tan ambiguo.

Refiere aquella el principio de las negociaciones. Estamos conformes con su relato hasta que llega a la narracion de la primera conferencia de Mr. Cambon con el Senor Presidente de los Estados Unidos. Se refiere en el Memorandum que, en tal conferencia, el Presidente dijo respecto a Filipinas, que la nota (la citada del 30 de Julio) expresaba los propositos de su Gobierno, y la disposicion final de aquellas dependeria del tratado que debia negociarse por los Comisionados: que despues de una posterior discusion en que el Presidente reitero que el tratado habia de determinar el porvenir de las Islas Filipinas, se leyó el articulo 3 en que se decia que los Comisionados resolverian sobre el control, la posesion y el gobierno de aquellas islas; que Mr Cambon propuso la substitution de la palabra posesion por la de condicion, por entender que aquella podia ser tomada por el Gobierno español como severa y amenazadora; que el Presidente se nego al cable propuesto, mas al fin acepto en lugar de la palabra posesion la de disposicion, que (refieren los Comisionados americanos, no sabemos al como opinion del Presidente o suya propia) no cambiaba el significado, y que siendo muy amplio, podia incluir el de la posesion.

Veamos ahora como refiere Mr Cambon lo que paso en esta entrevista. Decia en su despacho de 31 de Julio al Gobierno español: "Las peticiones formuladas en el "articulo 3 (dijo al Presidente) son a proposito para comprometer en Madrid el exito "de esta negociacion preliminar, sobre todo si se mantiene entre las palabras control "y gobierno de Filipinas la palabra posesion, que parece poner desde ahora en duda "la soberania de Espana sobre esta colonia. Observara V, me dijo entonces el Presidente de la Republica, que mis peticiones, en lo que se refiere a los dos primeros "articulos, no admiten discusion; dejo a las negociaciones el cuidado de resolver la "cuestion de Filipinas. Si las fuerzas americanas "(dijese toda la atencion en estas "frases) permanecent hasta hoy en sus posiciones, es para obedecer a un deber que "me imponen respecto a los residentes y extrangeros los progresos" (aqui unas palabras que no pudieron traducirse, pero que bien se comprende que debian referirse a la insurreccion tagala). Viendo "al Senor Presidente de la Republica resuelto a no "modificar los terminos del articulo 3 hice un llamamiento tan apremiante a su generosidad que..... manda reemplazar la palabra posesion por la de disposicion que "no prejuzga el resultado de las negociaciones y que no tiene el mismo sentido global."

Entre una y otra relacion notaran seguramente los Comisarios americanos bastantes diferencias. En la suya nada se lee respecto a la unica razon, que manifesto el Presidente que tenia, para no retornar desde luego del Archipelago las fuerzas Americanas, lo cual acusa que entonces estaba muy lejos de pensar en que hubiera de pedirse la soberania de aquel para los Estados Unidos. Segun la relacion americana, la palabra disposicion fue aceptada, porque contenia el sentido de la palabra posesion; nas, segun el despacho de Mr Cambon, aquella palabra en lugar de la de posesion cambiaba el sentido global de la clausula. Y tengan o no razon la Comision americana o Mr Cambon, siempre resulta que este acepto el cambio, porque entendio que asi quedaba descartada toda cuestion sobre la conservacion de la soberania de Espana sobre Filipinas.

El viernes 3 de Agosto, volvio a celebrar el Senor Presidente otra conferencia

con Mr Cambon. Se dice en el Memorandum que, en ella, manifesto este que Espana insistia sobre el asunto de que su soberania no fuera intervenida; que el Presidente le contesto que la disposicion de las Islas Filipinas debia depender del tratado que habia de negociarse, y que no podia hacer ningun cambio en los terminos anteriormente propuestos.

Veamos ahora como refiere esta conversacion Mr Cambon, en su despacho del 4 de Agosto al Ministro de Estado espanol. "Mr. Mac Kinley se mostro inflexible (sobre la cesion de Puerto Rico) y me replico que la cuestion de Filipinas era la unica que "no estaba ya definitivamente resuelta en su pensamiento." Despues de referir su insistencia en las frases que ya quedan transcritas en este Memorandum. Mr Cambon continua: "Mr. Mac Kinley me contesto, no quiero dejar subsistir "ningun equivoco sobre este particular; los negociadores de los dos paises seran los "que resuelvan cuales seran (notese) las ventajas permanentes que pediremos en el "archipelago y, en fin, los que decidan la intervencion (controle), disposicion y "gobierno de las Islas Filipinas. Y agrego, el Gobierno de Madrid puede tener la "seguridad de que hasta ahora, no hay nada resuelto a priori en mi pensamiento "contra Espana, asi como considero que no hay nada decidido contra los Estados "Unidos." (Textual.)

Comparese tambien una relacion con la otra. Le del Memorandum americano se limita a referir que el Senor Presidente habia dicho que la disposicion de las Islas Filipinas debia depender del tratado y que ningun cambio podia hacer en los terminos. Pero omite la segunda y mas importante parte de la conversacion que refiere Mr Cambon, a pesar de que contiene datos que no pueden dejar lugar a la menor duda sobre la cuestion pendiente. Se observa en primer lugar que asi en esta contestacion, como en la anterior, de la misma manera que en las notas del Gobierno Americano, se omite con el mayor cuidado la palabra soberania, al hablar de las Filipinas, entre tanto que, con un cuidado igual, se emplea esta palabra por el Gobierno espanol y por su representante en Washington, para decir sin cesar que aquella no quedaba sometida a discusion. Unase esta observacion a las ya hechas sobre la persistente y clara aunque implicita resistencia a explicar las tres palabras sobredichas.

Mas a pesar de todo esto el Senor Presidente dijo, y la Comision americana en su Memorandum no lo niega categoricamente, que la Conferencia de Paris seria la que habia de resolver cuales habian de ser las ventajas permanentes que los Estados Unidos habian de pedir en el Archipelago, ademas de cual habia de ser el controle, la disposicion y el gobierno de las Islas.

Se dice en el Memorandum que el Presidente no se limito a hablar de las ventajas permanentes. Es verdad que la Comision espanola no ha dicho, ni dice que se haya limitado a eso, porque anadio lo que se acaba de decir. Pera que tiene esto que ver para desconocer el sentido que de las palabras del Presidente resultan? Si era su pensamiento, ya perfectamente formado a la sazón, el pedir en la conferencia no una sola ventaja sino ventajas permanentes en el archipelago para los Estados Unidos, es evidente que no pensaba pedir la soberania. Puede esta calificarse de mera ventaja permanente de los Estados Unidos en aquellas Islas? Y aunque tan singular hipotesis quisiera sostenerse como habia de explicarse en este caso el numero plural empleado por el Senor Presidente de los Estados Unidos? A esta observacion ya hecha en el escrito anterior de la Comision espanola no se contesta en el Memorandum Americano, y se comprende, porque no tiene contestacion posible que pueda ser armonizada con el proposito que alli se pretende sostener.

No hemos de ocuparnos de las indicaciones que en el Memorandum se leen sobre el diversa idioma que entendian y hablaban los interlocutores en las do conferencias sobredichas; no puede ciertamente tal circunstancia dar verosimilitud al supuesto de que el Senor Presidente no haya expresado, no ya una idea incidental, sino las importantes y capitales que Mr. Cambon afirma que le ha oido.

Si este no lo hubiera entendido, a pesar de que tenia a su lado, segun se refiere en aquel Memorandum, a su Secretario que entiende y habla el ingles, no se puede suponer que le hubiera atribuido, de modo tan positivo, sin faltar deliberadamente a la verdad, lo que consigno en su despacho.

Pasemos ahora a la nota del Gobierno espanol del 7 de Agosto. La Comision americana esta conforme con la espanola en reconocer yue en esta nota del Gobierno de Madrid al manifestar que exceptaba la clausula 3 salvo a priori su soberania sobre el Archipelago Filipino; por esto no consideramos necesario transcribir una vez mas textualmente sus palabras: la unica diferencia entre ambas Comisiones consiste en que entretanto que la espanola afirma y se ratifica en esta afirmacion, que en la nota de su Gobierno se empleaba el adjetivo entera o total, al hablar de la soberania que alli se reservaba para Espana, la Americana dice que en la traduccion al ingles de esta nota, que entreg al Gobierno de Washington Mr. Cambon, no existe tal adjetivo. Nosotros tenemos lo copia, no la traduccion como se la llama en el Memorandum americano, de la nota original del Gobierno espanol, la que ponemos a la

disposicion de la Comision americana. En ella, el adjetivo esto escrito; si al hacerse en Washington su traduccion al ingles, se omitio, cosa se que sabra la Comision americana, por haber visto tal traduccion, pero que puede menos de ignorar la espnola que nunca tuvo de ella conocimiento. La diferencia no tiene importancia alguna, porque, aun prescindiendo de tal adjetivo, queda siempre como verdad y asi la reconoce la Comision americana, que el Gobierno espanol se reservaba alli a priori su soberania sobre Filipinas y que solamente con esta reserva aceptaba la base 3. Y so despues el Gobierno espanol no cambio de opinion, y en efecto esto no se afirma ni seria posible que se afirmase en el Memorandum americano, siempre resultara que el Protocolo y su clausula 3 no obligan, en buen derecho, al Gobierno espanol, sino con la expresa reserva que hizo al aceptarla, y de que no desistio despues.

Mas en el Memorandum americano comprendiendose sin duda, la incontrastable fuerza de la consecuencia que resultaba de haberse firmado el Protocolo sin que el Gobierno de Washington, una vez enterado de aquella reserva, nada hubiera dicho en contra suya, se manifiesta que, asi el Presidente de la Union como su Secretario de Estado, al oir la lectura de aquella nota, dijeron que era vaga e indelicada, suponiendo que aceptaba los terminos de la de los Estados Unidos, mientras requería alguna modificacion, y que respecto a Filipinas, si en un parrafo se expresaba la aceptacion de la clausula, en otro parecia reservarse el derecho absoluto de soberania.

La reflexion es habil, mas por desgracia suya, no parece tan exacla como habil. Es vardad que dichos Senores, leida que les fue la nota, revelaron su desagrado. Lo que no parece exacto, a juzgar por lo que dijo entonces Mr. Cambon, es que la causa de tal desagrado fuese lo que, no vaga e indefinidamente, sino clara y terminantemente, en la nota se decia sobre la reserva que Espana hacia de su soberania sobre el archipielago. El mismo Memorandum americano transcribe el parrafo correspondiente de la nota leida y en esta, no vaga e indeterminada, sino expresa, clara, y terminante esta reserva.

La causa revelada en aquel acto, por el Senor Presidente, de su desagrado, fue otra muy diversa, que refiere Mr. Cambon en el parrafo siguiente de su despacho de 10 de Agosto. Hielo aqui: "Senor Duque: Tambien ha sido esta vez en la Casa Blanca, en presencia del Senor Mac Kinley y por expreso deseo suyo, donde he comunicado al Secretario de Estado el telegrama (la nota sobredicha) de 7 de Agosto, en que V. E. declara que el Gobierno de Espana acepta las condiciones impuestas por los Estados Unidos. Esta lectura contrario visiblemente al Presidente de la Republica y al Secretario de Estado. Despues de un silencio prolongado me dijo "el Senor Mac Kinley: Yo habia pedido a Espana la cesion y por consiguiente la "evacuacion inmediata (esta evacuacion inmediata no hemos podido averiguar cuando habia sido pedida) de las Islas de Cuba y Puerto Rico; en vez de la aceptacion categorica que esperaba, el Gobierno espanol me dirige una nota en que invoca la "necesidad de obtener la aprobacion de las Cortes; no puedo prestarme a entrar en "estas consideraciones de orden interior. Hice observar que al conformarse el "Gobierno de Su Majestad con sus deberes constitucionales no hacia mas que imitar "al Presidente, al cual le estan impuestas obligaciones analogas, que en su contestacion de 3 o de Julio habia reservado expresamente la ratificacion del Senado "Federal" (asi era la verdad y constan dicho despacho de 3 o de Julio).

No alego el Senor Presidente ni su Secretario de Estado otro motivo para su disgusto, mas que el sobredicho, y segun Mr. Cambon, en la conversacion nada dijeron aquellos Senores sobre la expresada reserva de la soberania del archipielago que hacia Espana, ni sobre otra cosa alguna mas que la reserva del Gobierno espanol de la aprobacion de las Cortes.

Asi es que el Senor Presidente concluyo por contestar al Senor Cambon, que le preguntaba sobre las prendas de sinceridad que podria darle Espana, lo siguiente: "Habria un medio de poner termino a todo equivoco: podriamos nosotros preparar "un proyecto que reproduzca las condiciones propuestas a Espana en los mismos "terminos en que ya los he formulado (hasta aqui esto era en efecto todo lo convenido) y que fijen los plazos en que se nombraran por una parte los Plenipotenciarios encargados de negociar en Paris el tratado de paz, y por otra parte Comisiones especiales encargadas de determinar los detalles de la evacuacion de Cuba "y de Puerto Rico." (Esto al que se habia pasado de consignarle en la nota del 3o de Julio, y esto por si solo hubiera sido causa bastante para explicar el cambio de formalizacion de las condiciones para la paz.)

Veasi pues si hay una distancia inmensa entre lo que en el Memorandum americano se afirma, y lo que Mr. Cambon manifesto al Gobierno espanol en su nota del 10 de Agosto, o sea inmediatamente despues de haber asistido a tan importante conferencia y cuando por consiguiente tenia tan reciente en su memoria lo ocurrido en ella. Haciendo justicia a la perfecta veracidad de los Comisarios americanos, su relacion de aquella conferencia a los tres meses de celebrada, no puede ser preferida por los Comisarios espanoles a la del Honorable Mr. Cambon que hizo la suya inmediatamente despues de ocurrido el suceso que en ella tan detalladamente narraba.

En el Memorandum Americano se alega que el Señor Secretario de Estado de Washington haya manifestado en su nota de 10 de Agosto a Mr. Cambon, como la Comisión española había afirmado, que la del Gobierno de Madrid (la de 7 de Agosto) contenía en su espíritu la aceptación por España de las condiciones propuestas por los Estados Unidos; y al efecto se inserta allí literalmente dicha nota.

Rectifican la Comisión española su afirmación anterior acomodándola a lo que en aquella se expresa. Pero cumple a su veracidad decir que al hacerla se refirió a la nota de Mr. Cambon, de 11 de Agosto, que empieza con el siguiente párrafo: "Señor Duque: Al transmitirme el proyecto de Protocolo cuyo texto he teleografiado a V. E. el Secretario de Estado me ha dirigido una carta que puede resumirse como sigue: Aunque la nota entregada ayer en la Casa Blanca contiene en su espíritu la aceptación por España de las condiciones propuestas por los Estados Unidos, en su forma no las particulariza bastante explícitamente, lo que sin duda se debe a que ha tenido que ser traducida y cifrada varias veces." Estas palabras que bien puedan explicarse sin mengua de la indiscutible veracidad del Honorable Mr. Cambon, indujeron y no podían menos de inducir a error a los Comisarios españoles. Cumplen noblemente el deber de declararlo así.

Más después de todo, la diferencia no es de importancia. El Señor Secretario de Estado, y esto sí que consta en su propia carta, no puso otro defecto a la nota española del 7 de Agosto, que el no ser enteramente explícite, sin duda a causa de las diversas transformaciones que había sufrido. Pero es el caso, que ese defecto no es posible que lo hubiese atribuido el Señor Secretario de Estado al párrafo de dicha nota perfectamente traducida al inglés (salvo el adjetivo "total") que en el Memorandum americano se copia, y se dice que había sido leído al Señor Presidente de la Unión y a su Secretario de Estado, y en cupo párrafo, clara, explícita y terminantemente, el Gobierno español reserva a priori su soberanía en Filipinas. Sería poco explícito todo lo demás que la nota contenía si se quiere decirlo así; pero aquella reserva no lo fue seguramente. Por lo tanto, la carta a que nos venimos refiriendo no contradice la afirmación que sostenemos, de que la mencionada reserva, de que el Gobierno de Washington oportunamente se había enterado y constaba tan clara en la traducción inglesa que tenía en su poder, no fue por el contradicha, ni sirvió de motivo para emplear la nueva forma de Protocolo, como medio de solemnizar el convenio sobre las bases de la paz. Ese motivo bien resalta en los documentos ya examinados que contienen aquellas negociaciones.

Después de cuanto precede nos parece que, hayan sido cualesquiera las íntimas intenciones del Gobierno de Washington, su conducta y sus palabras escritas y habladas no son bastantes para destruir la afirmación que hacemos de que España aceptó la tercera cláusula del Protocolo en el sentido comunicado a aquel Gobierno, y no contradicho por él, de que a priori quedaba a salvo su soberanía en Filipinas, puesto que su control, su disposición y gobierno, que habían de acordar la Conferencia de París, se referían únicamente a su régimen interior. Y esto por sí solo sería bastante para sostener sin contradicción fundada que aquella Conferencia no puede ocuparse ni tiene atribuciones para ocuparse de la cesión que piden los Estados Unidos, aunque por un supuesto, que consideramos imposible, llegara a destruirse la prueba que, tomada de las mismas palabras del Señor Presidente de la Unión, hemos procurado hacer y creemos que hemos hecho, de que según su propio pensamiento entonces aquella soberanía quedaba fuera de discusión ulterior.

Que ha de decir la Comisión española sobre las palabras que lee en el Memorandum americano y que parecen buscar un fundamento a la actual petición de aquellos en la indemnización de guerra, como si no estuviera fuera de discusión y no hubiera sido reconocido por la misma Comisión americana que esta indemnización de los gastos de la guerra, y no solo de ella sino también la de los ciudadanos americanos, en su mayoría, si no todos originarios de Cuba aunque, al parecer, naturalizados después en los Estados Unidos, que habían sufrido perjuicios en la última insurrección, se había convenido en cubrirla con la cesión de Puerto Rico, de las demás Antillas y de la Isla de Guam en las Marianas?

O ¿es que esa indemnización ha de ser una cuenta abierta en que quepa pedir todo lo demás que a España queda, incluso la propia Península?

Por cierto que el haberla limitado a la Isla de Guam en el Oriente es un indicio mas que acredita que los Estados Unidos no pensaban a la sazón en las Islas Filipinas. Si pensaran ¿se concibe que reclamaran entonces, desde luego, una pequeña e insignificante Isla y dejaran de reclamar el inmenso Imperio Filipino que estaba a ella tan próximo?

Reconozcase, pues, que carece de fundamento la reclamación o petición del Archipiélago Filipino que se hace para los Estados Unidos en la forma y con las condiciones que se leen en la proposición americana. Mientras esta cesión se pretenda en tal forma y con tales condiciones, la Comisión española no puede menos de rechazarla.

Memorandum en apoyo de la ultima proposicion espan

En esta proposicion pidieron los Comisarios de Espana, segun se recordara, que los americanos presentasen otra acomodandola a lo convenido en los articulos 3 y 6 del Protocolo, esto es, proponiendo la forma de intervencion, disposicion y gobierno que habia de establecerse por Espana en Filipinas, la devolución de la plaza, puerto y bahia de Manila, la libertad de su guarnicion actualmente prisionera, la devolución de los fondos publicos, rentas e impuestos que hubiesen percibido hasta que se hiciera la entrega de la plaza, y el compromiso, o sea el reconocimiento por parte de los Estados Unidos, de la obligacion de indemnizar a Espana por la retencion de las tropas que guarnecian la ciudad, cuando se rindio, el 14 de Agosto ultimo.

La Comision americana ha rechazado esta proposicion, porque entiende que no exigen que la presente los citados articulos 3 y 6 del Protocolo.

Respecto a la primera parte que se refiere a la intervencion, disposicion y gobierno del archipiélago el tratar de demostrar aqui que no se ha cumplido el articulo 3 con la proposicion americana en que, en lugar de ocuparse del regimen interior de aquellas islas, se pido su cesion a los Estados Unidos, seria repetir lo que en la parte anterior de este documento deja expuesto la Comision espanola. De sus razonamientos entiende que resulta, con la claridad del medio dia, que una cosa es la cesion de aquellas islas, que es de todo punto agena a lo contenido en la convencion de Washington, y otra es el regimen interior de las mismas que, segun su referida clausula 3 puede y debe ser materia del tratado de paz.

Faltarían, pues, los Comisarios espanoles a sus propias convicciones, si no persistieran en demandar a la Comision americana, la presentacion de una proposicion sobre tal regimen, a no quedar infringida, no solo en su propio sentido, sino hasta en su propio texto, la clausula 3 de aquel convenio.

En el primer parrafo de la proposicion especial y relativa a la toma de Manila, se pide la devolución inmediata a Espana de la ciudad y de su bahia y puerto. Rectificando aqui una de las equivocaciones de hecho que abundan en el Memorandum americano tenemos que hacer constar que, en la proposicion espanola, no se pido esta entrega inmediata, ni de nada de lo que los siguientes parrafos de la proposicion tambien contienen, para que se llevase a cabo desde ahora. La entrega inmediata habia de suceder, como no podia menos de ser así, a la celebracion del tratado de paz. La prueba es bien concluyente para que los Comisarios espanoles debieran suponer que nunca tendrian que hacer esta rectificacion. Dice así el primer parrafo de la proposicion sobredicha: "Los Comisarios espanoles por lo tanto, en cumplimiento de lo expresamente convenido en el Protocolo, entienden que en el tratado de paz debe consignarse, 1 la entrega, etc. * * *" Si esta se habla de convenir en el tratado de paz como pudo suponerse que la Comision espanola pedia que se hiciese antes de convenirse?

Vamos a despejar el trabajo de este Memorandum haciendo dos rectificaciones de caracter personal antes de entrar a discutir el punto de la rendicion y capitulacion de Manila y sus consecuencias.

En el Memorandum espanol al que el ultimo americano sirve de contestacion, no hay frase que ofenda ni lastime la honrabilidad del General Merritt y del Almirante Dewey. En el Memorandum americano quiere darse a entender que, con mayor o menor habilidad, se insinua en el espanol la idea de que los jefes militares de la Union rindieron por la fuerza de las armas la plaza de Manila el 13 de Agosto, cuando ya sabian que se habia acordado la suspension de hostilidades. Es un error. La Comision espanola no empleo, ni acostumbra a emplear, habilidades de ningun genero para disfrazar un pensamiento. Si hubiera creido que aquellos Generales habian faltado al armisticio despues de tener noticia de su celebracion, lo hubiesen claramente dicho. Al hacerlo así no hubieran faltado a los respetos que aquellos Jefes merecen, como a nadie se le ocurrio creer en 1871 que se faltaba a los respetos debidos al General aleman de Manteuffel imputandole la falta que habia cometido, cuando despues de celebrado un armisticio parcial entre las tropas francesas y alemanas, se aprovecho del error en que, sobre la extension de este armisticio, habia incurrido el General Clinchant, para envolver y obligar a refugiarse en Suiza al cuerpo de ejercito de su mando. Nosotros nada hemos dicho, ni tenemos que decir, contra la conducta personal de aquellos dos Jefes, al contrario, podemos afirmar un hecho que redunda en pro de los bellos sentimientos del Almirante. El 1 de Mayo, quizá bajo la embriagadora influencia de la victoria, envio desde el "Olympia" al Gobernador General de Manila, una comunicacion que dice así: "De no rendirse inmediatamente todos los buques torpederos y de guerra que existan con bandera espanola, Manila sera destruida." Esta comunicacion presumimos que no figurara en el capítulo de la historia en que se registran los servicios prestados a la causa de la humanidad de que tanto se alardea en estos tiempos. Pero nos complacemos en reconocer que el autor de aquella orden draconiana, por la espontaneidad de sus buenos sentimientos se abstuvo, aunque hubiera podido intentarlo, de llevarla a cabo.

Esto no obsta para que el buen juicio, que merecen personalmente aquellos honorables Jefes, no pueda extenderse hasta el punto de tener que agradecerles que hubiesen deliberadamente dilatado la rendición de la plaza hasta el 13 de Agosto, por su propósito de "proteger a la ciudad y a sus habitantes españoles contra la terrible venganza de los insurrectos." No parece comprensible este propósito: los insurrectos no sitiaban aun la plaza por el lado de tierra, en los primeros días de Mayo, que solamente estaba bloqueada desde la bahía por la flota americana. Empezaron después y no con el mismo número de fuerzas desde el principio, pues estas fueron poco a poco aumentando hasta formar las masas de insurrectos que se hallaban al frente de las trincheras de defensa por el lado de tierra el día de la rendición. De suerte que, al por la indicada razón los Jefes americanos no se habían apoderado hasta aquel tiempo de la plaza, mucho menos debieron hacerlo después. Mas, aparte de esto, los hechos demuestran que tal peligro no existía, porque siempre hubieran podido evitarlo las fuerzas americanas que, al rendirse Manila, habrían de desembarcar en ella y guarnecerla, como lo evitaron desde el 14 de Agosto, a pesar de que según se ha dicho, era mayor el número de los insurrectos sublevados que dominaban en las afueras.

Vease, pues, como sin incurrir en pecado de ingratitud, puede dejar de reconocerse puesto servicio a los sobredichos Jefes, sin que esto en nada obste al buen concepto a que les hace acreedores su comportamiento personal.

En cambio el Memorandum americano al referir la inesperada rendición y la salida de Manila del General que mandaba las tropas españolas, emplea una palabra de todo punto incompatible con el honor de un militar. Cualquiera que haya sido la conducta de aquel Jefe, esta al amparo de las leyes y tribunales de su patria, que examinarán sus actos para aprobarlos o desaprobados, según fuese menester, pero no esta a merced de nadie mas y sobre todo de juicios de carácter oficial que quieran emitirse en el extranjero y por extranjeros.

Dejamos esentado en la segunda parte de este Memorandum, que en las tantas veces citada cláusula 3 del Protocolo, se había convertido la ocupación por las fuerzas de los Estados Unidos de la ciudad, puerto y bahía de Manila hasta la celebración del tratado de paz, meramente en concepto de garantía.

En tal sentido queda allí demostrado que acepto esta ocupación el Gobierno de Madrid sin expresa contradicción por parte del Gobierno de Washington.

En el Memorandum americano parece que quiere deslizar la idea de que tal ocupación debía tener, asimismo, el carácter de indemnización por los gastos de guerra, fundándose en que en la nota de 30 de Julio en que el Señor Secretario de Estado comunicó al Gobierno español las tres condiciones bajo las cuales podía restablecerse la paz, después de decir en la segunda que para aquella indemnización España había de ceder Puerto Rico, las otras Antillas y la Isla de Guam, se comenzaba la cláusula 3 con las frases: "Por la misma razón, los Estados Unidos tienen títulos para ocupar la plaza de Manila, etc." La observación no carece a primera vista de alguna fuerza, pero saben perfectamente los Comisionados americanos que esta es aparente y que lo ocurrido prueba cumplidamente lo contrario. Después de manifestar e insistir el Gobierno español en su nota del 7 de Agosto y su representante en las conferencias que celebró con el Señor Presidente de la República, en que la ocupación de Manila no había de tener otro carácter que el de una mera garantía, aparecen suprimidas en el Protocolo las frases sobredichas. De suerte que dejó de hacerse en el relación alguna entre la ocupación futura de aquella plaza y el pago de la indemnización de guerra, y además dejó de decirse que los Estados Unidos tenían ya el derecho de ocuparla. Sin duda por esto la idea se insinúa, pero no se desenvuelve, ni categóricamente se afirma, en el Memorandum americano.

Los Comisionados españoles reconocen que tuvieron una agradable sorpresa al observar que, en este documento, ya no se alegaba, como había alegado el Gobierno americano al contestar la nota del español de 7 de Setiembre último, la razón perentoria de que la suspensión de hostilidades, según la cláusula 6 del Protocolo no debía comenzar a regir inmediatamente de concluido y firmado este documento, sino después de su notificación a los Jefes de las fuerzas beligerantes, a pesar de que punto de tanta importancia había sido expuesto, razonado y demostrado con todo detenimiento, en el documento español a que aquel sirve de contestación. Esta conducta abona su buen criterio y su ilustración en la materia, porque equivale a un implícito reconocimiento de la solidez de aquella afirmación que, después de todo, es elemental en la materia, y que por nadie, como doctrina corriente, ha sido contra dicha.

En cambio espiroan, insistiendo en analogas indicaciones que se leen en la citada respuesta del Gobierno de los Estados Unidos a la nota del de Madrid de 7 de Setiembre último, a desvirtuar por tardía la reclamación española sobre la capitulación de Manila. No han podido comprender los Comisionados españoles la fuerza del razonamiento sobre este punto. El Gobierno de Madrid formuló con toda solemnidad esta reclamación en la mencionada nota, es decir, 23 días después de la capitulación de la plaza. Que ley, ni que práctica abonan que se tenga por prescrito el derecho a

una declamacion de esta especie, cuando no se hace antes de transcurrir el dia vigesimo tercero a contar desde el hecho que la motiva?

Se dice ademas, entrando en el terreno de las intenciones del Gobierno espanol, que este suponía que aquel hecho de guerra habia sido perfectamente correcto cuando pocos dias despues pedia al Gobierno americano permiso para transportar viveres a Filipinas y restablecer el servicio ordinario de sus vapores correos. Cuando esto acaecio, aun ignoraba el Gobierno espanol ocurrido el dia 14 de aquel mes en Manila. Asi tambien deja entender la Comision americana que es verdad. Mas aunque lo supiera, que permiso es ese que se supone pedido por el Gobierno espanol? Lo sucedido es lo que no podia menos de ocurrir entre Gobiernos que, aunque enemigos guardan siempre los deberes que la lealtad impone a todas.

El statu quo que resultaba de la suspension de hostilidades prohibia a cada uno de los beligerantes mejorar su situacion en perjuicio del otro, mientras aquel estado subsistiera: el Gobierno espanol, como cualquiera otro que no quiere faltar a los indicados deberes, tenia el de comunicar al Gobierno americano, obrando con el de acuerdo, el restablecimiento de los servicios que existian antes de la guerra; asi obro el mismo Gobierno de Washington cuando en 16 de Agosto solicito del Gobierno de Madrid el consentimiento para restablecer el servicio telegrafico entre Manila y Hong Kong.

Reconozcase, pues, que la reclamacion del Gobierno espanol fue hecha en tiempo oportuno, y aunque entonces no la hubiera hecho, su Comision estaba autorizada para hacerla ahora, puesto que lo esta para pedir todo aquello que conduzca al cumplimiento fiel y exacto del convenio de Washington.

Queda, pues, sentado por no haber sido contradicho en el Memorandum americano a que en este se contesta, que la suspension de hostilidades convenida en la clausula 6th del Protocolo, comenzo a regir y a producir sus legales efectos, inmediatamente despues que aquel se firmo en la tarde del 12 de Agosto de este ano. Y tengase presente que "si hay un precepto de las leyes de la guerra mas claro y venturoso que otro alguno es el de que los pactos entre los enemigos, como son las treguas, han de cumplirse fielmente y que su inobservancia debe calificarse no solo como una contradiccion del verdadero interes y del deber de las partes inmediatas sino de los de toda la humanidad." Estas frases no las rechazaran los Comisionados americanos porque son de su ilustre compatriota el eminente Wharton en su Digesto del Derecho internacional de los Estados Unidos, formado con textos de los Presidentes y Secretarios de Estado, con las decisiones de los tribunales federales y con los dictámenes de los Abogados Generales.

Se ha observado con esta escrupulosidad lo convenido en la clausula 6 del Protocolo? El dia 13 de Agosto era canoneada de la plaza de Manila y el 14 se rendia. Los Jefes de las fuerzas americanas no tienen los Comisionados espanoles razon alguna para afirmar que supieran que las hostilidades estaban suspendidas; pero es lo cierto que aquella accion de guerra se ejecuto despues de esta suspension.

Y con este motivo tiene la Comision espanola que completar la pequena historia que se hace en el Memorandum americano sobre el restablecimiento del cable de Manila. Se dice alli que en 16 de Agosto fue el Gabinete de Washington quien, por medio de una nota al Embajador de Francia, solicito el consentimiento del Gobierno espanol para restablecer la comunicacion telegrafica entre aquella plaza y Hong Kong. Y esto es verdad, pero tambien lo es lo que se pasa a referir. El Almirante americano habia cortado en Manila dicho cable al principio de la campana. Despues de varios inutilis intentos de la Direccion general espanola de correos y telegrafos cerca de la Compania concesionaria para el restablecimiento de su servicio, insistio aquella Direccion en 9 de Julio ultimo cerca de la indicada Compania sobre tal restablecimiento, conformandose por parte de Espana con la absoluta neutralidad del servicio. La Compania puso esta proposicion en noticia del Embajador de los Estados Unidos en Londres para obtener tambien su consentimiento. Mas este, en 16 del mismo mes, le contesto que su Gobierno preferia que continuase cortado. De esto resulta que si no habia comunicaciones directas con Manila por la via de Hong Kong el 12 de Agosto, en que se firmo el Protocolo, era debido al Gobierno de Washington que hacia un mes que se habia opuesto a su restablecimiento. Razon de mas, si fuera precisa (que no lo es) para que la ignorancia de la suspension de hostilidades en que estaban los Generales americanos al atacar la plaza el 13 de Agosto, no solo no pueda servir de motivo para que los Estados Unidos se aprovechen del acto de guerra entonces ejecutado contra lo que su Gobierno habia convenido el dia anterior, sino para que tengan que responder de los indebidos perjuicios que aquel acto causo a la otra parte beligerante.

Todos los razonamientos extendidos en el Memorandum americano sobre el caracter legal que alli se pretende dar a la rendicion y capitulacion de Manila y a los actos que desde entonces ejecutaron en la plaza y aun funera de ella, los Jefes de las fuerzas militares de la Union, pueden concentrarse en las siguientes afirmaciones:

PRIMERA. El caracter legal de la mencionada capitulacion es el mismo que cor-

respondería a la entrega pacífica de la plaza en virtud de lo convenido en la cláusula 3 del Protocolo, y por esto los derechos que la parte beligerante tiene en la plaza que ocupa como garantía son los mismos que tendría si la ocupara por haberla rendido en acción de guerra, y

SEGUNDA. La ocupación de Manila, su bahía y puerto convenida en la cláusula 3 del Protocolo fue una ocupación militar.

La Comisión española no hubiera creído nunca que tuviera que rectificar errores tan graves si no los leyera estampados en el Memorandum americano.

Es elemental en la materia que la ocupación de una plaza o de un territorio, convenida entre las partes beligerantes para que sirva de garantía a lo estipulado en un tratado o al cumplimiento de una obligación que pese sobre aquella a quien corresponda la soberanía de la plaza o territorio ocupado, no tiene, ni puede tener, otro título más que el del convenio mismo en que se halla estipulado. Pero el de la ocupación a viva fuerza de una plaza o territorio que se rinde por un acto de guerra tiene un nombre especial y es el de capitulación.

Y el denominar así lo convenido en el Protocolo para poner por tal medio a su amparo la capitulación legal de Manila después de haberse firmado aquel documento, es un error en que hasta ahora nadie ha, oficial ni científicamente, incurrido, y que no consiente el significado, no ya técnico sino vulgar, de la palabra capitulación. La ocupación pacífica de garantía no da más derecho a la parte ocupante que el de establecer la guarnición o conservar las fuerzas militares que considere necesarias en la plaza o territorio, para tenerlos en su poder entretanto que no se cumple la obligación principal a que la ocupación sirve de garantía. El aprovisionamiento de las tropas de ocupación es natural que sea a cargo del soberano del territorio ocupado. Mas aunque este aprovisionamiento es una condición natural no es esencial del convenio. Por esto, en los casos más notables que se han presentado de ocupaciones de esta especie, tuvo buen cuidado la parte ocupante de estipular, de un modo expreso, la obligación de este aprovisionamiento. Bien conocidos son los casos de ocupación, en concepto de garantía, que hubo en 1815 y 1871 de varios departamentos de la Francia, a la terminación el primero de las guerras del Imperio, y el segundo de la Franco-Prusiana. En ellos se estipuló expresamente que el sostenimiento de las tropas de ocupación había de correr a cargo del Gobierno francés. Esto no se hizo en la cláusula 3 del Protocolo de Washington.

Todos los demás derechos de la soberanía, señaladamente la percepción de las rentas e impuestos públicos, continúan en la pacífica posesión del soberano del territorio ocupado. La parte ocupante tiene que respetar religiosamente tales derechos. La legitimidad de sus actos no se extiende más allá de lo que sea necesario para el cumplimiento del fin de la ocupación.

De estos elementales principios, que para el caso presente no necesitan mayor desenvolvimiento, resulta que los Estados Unidos, en virtud de lo convenido en la cláusula 3 del Protocolo, no tenían más derecho que el de conservar en su poder, hasta la celebración del tratado de paz, la ciudad, puerto y bahía de Manila, como garantía de lo convenido en dicho Protocolo, y por lo tanto, nada más que el derecho de guarnecer dicha plaza, bahía y puerto con las fuerzas necesarias de su ejército y marina, pero respetando el ejercicio de la soberanía de España en ellas en todo lo demás que sea compatible con este derecho de guarnición (que así propiamente es denominada la ocupación de garantía).

Pero la de una plaza o territorio por un acto de guerra da más amplios derechos al beligerante que de la una o del otro se ha apoderado por la fuerza. No adquiere, es verdad, por la conquista, el derecho de soberanía en el país conquistado, pero sí adquiere la posesión, y ejercicio provisional de esta soberanía. Mientras la ocupación subsiste, las atribuciones del soberano en el orden político, en el financiero y aun en el administrativo, pueden ser ejercidas por el ocupante, aunque siempre con la moderación que requiere el respeto debido a los derechos de los habitantes pacíficos, porque hoy la guerra no se hace entre los pueblos, sino entre las fuerzas armadas de los Estados beligerantes.

Basto con lo dicho para que resalte la diferencia capital que a nadie permite confundir la ocupación pacífica de garantía con la ocupación bélica de la conquista. En que concepto persisten los Estados Unidos desde el 14 de Agosto en ocupar la ciudad, puerto y bahía de Manila? En concepto de ocupación bélica, por haberse apoderado de la plaza a viva fuerza después de firmado el Protocolo. En que concepto tienen exclusivamente derecho los Estados Unidos para ocupar aquella plaza y su bahía y puerto? En el de ocupación pacífica de garantía y nada más que en este, por lo convenido en la cláusula 3 de aquel convenio. Como, pues, cabe afirmar que es indiferente para el caso el carácter de tal ocupación? Es inútil insistir más sobre un punto de los más elementales que hay en la materia del Derecho Internacional de la guerra.

El segundo error que se ostenta en el Memorandum americano consiste en suponer que fue una ocupación militar la convenida en el Protocolo. Para aquellos que entiendan esta denominación en el sentido de ocupación con fuerzas militares,

...sin duda alguna sera la misma denominacion la que aplicaran a estos dos tan diversos casos de ocupacion. Mas por quienes, empleando el tecnicismo consagrado por la ciencia y por los tratados, reserven la denominacion de ocupacion militar a la ocupacion bellica, o sea a la que se hace por la fuerza, no podra calificarse de ocupacion militar la convenida en el Protocolo.

Es, pues, inutil querer poner al amparo de una denominacion comun actos esencialmente diversos y cuyas consecuencias legitimas jamas se han confundido. La ocupacion de la plaza, bahia y puerto de Manila a que tienen derecho los Estados Unidos por lo convenido en Washington, no es una ocupacion militar o bellica que les haya conferido legitimamente los derechos y facultades que esta lleva en si misma.

Los Jefes de las fuerzas americanas en Filipinas, es indudable que participaron del error que en el Memorandum se comete. Se comprende que una vez apodados de la plaza y mientras no tuvieron noticia de la suspension de hostilidades, hubiesen comenzado a ejercer todas las facultades y derechos de un ocupante militar o bellico. Mas, en el Memorandum americano se reconoce que el 16 de Agosto fueron aquellos Jefes enterados de la suspension convenida de hostilidades. Esto no obstante, continuaron ejerciendo aquellas facultades que no tenian y que debian saber que no tenian. En aquella fecha aun funcionaban los organismos de la administracion espanola. Desde el 16 de Agosto fue cuando las fuerzas americanas comenzaron a apoderarse "manu militari" de tales organismos, y de los fondos, rentas e impuestos publicos, asi como continuaron reteniendo prisioneras las tropas espanolas que se habian rendido el dia 14.

Consideramos inutil insistir mas en la refutacion de errores de tal gravedad e importancia, cuya unica explicacion solamente puede hallarse en la triste y dura necesidad de tener que emplearlos como unicos medios de defensa de un punto cuarteado por todos lados.

Y como no hemos podido dar en el Memorandum americano con razones de mayor solidez que las indicadas entre las que se alegaron contra la proposicion espanola, se considera esta Comision en el deber de sostenerla y de no poder conformarse, por lo tanto, con la conclusion que pone termino al sobredicho Memorandum. Con lo dicho podria la Comision espanola dar por terminado este trabajo, si no fuera por el vivo deseo que la anima de buscar, por su parte, medios que removiendo los obstaculos que hoy existen para llevar a cabo la obra de paz encomendada a estas conferencias, puedan facilitar a ambas Comisiones el desempeño de una mision, que no puede menos de estar en perfecta armonia con los sentimientos de humanidad y patriotismo que por igual ciertamente las anima.

Aceptese la interpretacion que la Comision americana da a las clausulas 3 y 6 del Protocolo, o aceptese la que sostiene la espanola, es, por desgracia, evidente que surge una situacion que tan solo la buena fe de ambas partes puede resolver. Ya porque la conferencia de Paris no tenga atribuciones para ocuparse de la cuestion sobre la soberania del Archipiélago Filipino, aunque solo por el modo y forma con que es propuesta por la Comision americana, ya porque, aunque tales atribuciones tenga tiene tambien la natural y legitima libertad de ejercerlas en el sentido que la conciencia inspire a sus individuos, es lo cierto que, por balarse dividida por igual la opinion de estos sobre el asunto, se hace imposible la solucion del mismo. La Comision americana seguramente no sostendra que en el caso de conflicto o empate de su voto con el de la espanola deba prevalecer el suyo para que tenga el caracter de acuerdo de la conferencia en pleno.

Y como los Estados Unidos no llevan sus pretensiones mas alla que a que se les reconozca el derecho, que, segun ellos, tienen por el Protocolo para pedir la soberania del archipiélago, pero no llegan hasta el extremo de decir que les asiste tambien el derecho de exigir a la conferencia que acceda a su peticion, imponiendosela como si fuera un mandato, aparece manifiesta la imposibilidad de que pueda ser atendida la peticion del Gobierno americano, y en su consecuencia la de que este pueda adquirir la soberania del archipiélago por el unico titulo legitimo que afirma y reconoce que puede trasmitirselas.

Cuales son las consecuencias de una situacion tan apremiante e inflexible? La ruptura de las negociaciones? La consiguiente reapertura de la guerra?

Habra quien no se detenga ante consecuencias tan terribles? Habra quien entienda que no es preferible antes que someterse a ellas acudir a cualquier otro medio que la buena fe no puede menos de inspirar a las partes contratantes?

Y cual es este medio?

Pudieran muy bien ambas Comisiones acordar que la cuestion relativa a la soberania de las Islas Filipinas quedase separada de sus negociaciones y reservada a las que directamente se entablaran entre ambos Gabinetes, pudiendo entretanto continuar deliberando aquellas sobre todo lo demas que ha de contenerse en el tratado de paz.

Este medio, a primera vista tan sencillo, encierra no obstante graves peligros, y senaladamente los mismos que pudieran existir ahora si las negociaciones se rompieran, con la sola ventaja de dilatar por poco tiempo su advenimiento. Si

las dos Oltas Partes no llegasen a un acuerdo, la situación seria igual a la en que hoy se halla la conferencia de París.

Para la Comisión española hay otro medio mas sencillo y mas seguro, y consiste en que ambas Comisiones acuerden proponer a sus Gobiernos que un Arbitro, o un Tribunal arbitral constituido en la forma en que aquellos convengan, fije el recto sentido en que deben ser entendidos los Artículos 3 y 6 del Protocolo de Washington.

La diferencia de opinion entre ambas Comisiones descansa principalmente en el diverso sentido que cada una da a aquellos articulos.

Así resulta de sus respectivos Memorandums.

Pues bien, si en los conflictos de las naciones hay o puede haber algo que en vez de ser resuelto por la fuerza de las armas, deban los hombres de buena voluntad tratar de resolverlo por la fuerza de la justicia, o siquiera por los dictados de la equidad, es precisamente aquello que consiste en la diversa interpretación que haya surgido al tartar de aplicarse un artículo de cualquier tratado en que anteriormente hubieran convenido.

Podrán los soberanos, por un sentimiento de natural fereza, resistirse a someter al juicio de un tercero todo aquello que afecta a su honor, o siquiera a su amor propio. Podrán no querer encomendar a un juicio semejante la existencia o aun la integridad de sus Estados. Pero no se concibe que a la faz del mundo moderno y cristiano prefieran cubrir la tierra de cadáveres e inundarla de sangre humana, a someter su propia opinion en asuntos tan expuestos a la fallibilidad de la inteligencia de los hombres, como no puede menos de serlo el sentido que quiera darse a un mero artículo de cualquier convencion que sobre materia libre y agena a las sagradas causas sobredichas haya podido ser celebrada.

Los Estados Unidos son entre todos los pueblos del mundo civilizado los que, para gloria suya, han tomado la iniciativa y han manifestado mas decidido empeno en que se acuda a este medio tan humano, tan racional y tan cristiano, antes que al cruento de la guerra, para resolver los conflictos entre las naciones.

Ya en 1835 el Senado de Massachusetts aprobaba una proposición, presentada por la Asociación Americana de la Paz, preconizando la creación de un Tribunal internacional para resolver amistosa y definitivamente las dificultades entre los pueblos.

En 1851 el Comité de negocios extranjeros de Washington por unanimidad declaraba que era de desear que los Estados Unidos insertasen en sus tratados una cláusula para que diferencias que no pudieran resolverse por la diplomacia fueran sometidas, antes de comenzar las hostilidades, a la resolución de Arbitros.

En 1853 el Senado aceptaba el voto del Comité de negocios extranjeros. En 1873 otra vez el Senado, y en 1874 las dos Camaras volvian a consignar esta humanitaria aspiración. Y en 1888, en fin, no bastandoles fijar su propia línea de conducta en tan laudable sentido, ambas Camaras acordaban por resolución conjunta rogar al Presidente, que emplease de tiempo en tiempo su influencia para comprometer a todos los Gobiernos que con los Estados Unidos sostuvieran relaciones diplomaticas, a someter las cuestiones que entre los unos y los otros pudieran surgir en el porvenir a la resolución de Arbitros.

El caso que se presenta en las conferencias de París, espera la Comisión española que no ha de dar motivo a que los Estados Unidos, apartandose de tan gloriosos precedentes, quieran resolverlo por el ultimo medio que entre seres racionales y libres es tristemente inevitable, siquiera nunca sea lícito, en defecto de otros mas humanos, para conservar inalterable la paz entre los hombres.

Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

Annex to Protocol No. 14.

The last paper presented by the American Commission serves a double purpose. On the one hand it is a memorandum in support of its proposition of the 31st of October ultimo, asking for the cession of the Philippine Islands to the United States. On the other hand it is a statement of the reasons why the American Commission refuses to accept the Spanish proposition of the 4th instant, by which it was invited to submit a draft having for its object the fulfilment of the agreements made and entered into in Articles III and VI of the Washington Protocol.

As regards the first point of the American memorandum, to which the Spanish Commission will first give its attention, a reply to its contents will be presently given. As regards the other point, the Spanish Commission will insist on setting forth in the form of a memorandum, as provided by the rules, the grounds upon which its rejected proposition is based.

For the sake of systematic exposition, and moved by the desire to reduce as much as possible the dimensions of the present paper, the Spanish Commissioners feel themselves inclined to deal in the first place with the mortgage debts of the Spanish colonies,—which in spite of its capital importance they would have refrained from discussing again at the present stage of the negotiation of the treaty, if, as it appears, the American Commission had not raised it anew in the last paragraph of its proposition, asking for the cession of the Philippine Archipelago.

The Spanish commission acknowledges the difficulty under which it finds itself to answer this part of the American memorandum,—said difficulty arising out of the grave errors of fact with which said memorandum is strewn, and of the strange doctrines of law which are maintained in it.

The Spanish Commission needs before all to put on record that in its opinion, no language, or even a phrase, improper to a diplomatic discussion, has been used by it. Jealous of the considerations to which it is entitled, it begins by paying religiously those which are due to others, and in its documents it avoids with the greatest care the use of any phrase which might be personally unpleasant to whom it might be addressed, and much more, and with still stronger reasons, any word which might be deemed offensive to those who are and have the right to be under the protection of the persons with whom the Spanish Commissioners may have to discuss.

The American Commissioners say that they noticed with surprise that the Spanish Commissioners, after having accepted provisionally the articles which the former had proposed in regard to Cuba and Porto Rico, come now and raise again the question of the Cuban debt, reviving a point which under certain reservations had been expressly abandoned. And not contenting themselves with such rotund affirmations, they further said that the Spanish Commission in its written answer presented at the meeting of the 28th of October, had withdrawn its former observations to the articles of the American Commission.

So far as the said supposed withdrawal is concerned, we invite our worthy American colleagues to search with care all the phrases of our written answer, and show to us where it can be found. In the meantime, now as always, we are bound to state most positively that our document does not contain any such phrases, and that it shows, on the contrary, that we had nothing to withdraw, since we continued to maintain our views, subject, however, to what might prove in the future to be best for Spain. And, indeed, as a proof of what we have just stated, and as sufficient answer to the phrases of the American Commission, we shall content ourselves with transcribing here the phrases wherein the supposed provisional acceptance and the express withdrawal of the subject of the Cuban debt are said to be found. The Spanish Commissioners answer the said question (the question which the American Commission had propounded to them in writing at the meeting of the 28th of October) by stating that, reiterating their conviction that pursuant to law the colonial obligations of Cuba and Porto Rico must follow these islands and their sovereignty, they do not refuse to consider any articles as to Cuba and Porto Rico which contain no provision for the assumption of indebtedness by the United States or Cuba or both (these were exactly the same words of the question which we answered), "subordinating the final approval of such articles to that of the others which are to form the complete treaty," etc. And one of the reasons, set forth in writing, which induced us to the foresaid answer was as follows:

"Considering that this treaty is not to be framed, as no other treaty has or ever can be framed, upon the exclusive basis of strict justice, as understood by each party, but also upon the basis of the advantage to be derived by either or by both, thus modifying in harmony therewith the demands of strict law; and that therefore the Spanish Commissioners although understanding that strict law decides the question of the Cuban debt in their favor are in duty bound and are willing to moderate the said strictness in view of the advantages which Spain may derive from other stipulations of the treaty, which without being prejudicial to the United States may be favorable to Spain."

It seems to be very plain that the supposed abandonment, now spoken of in the American memorandum, and the supposed acceptance of the articles relating to Cuba and Porto Rico, were limited to the contingency that the Spanish Commission should understand, from the discussion and approval of all the other articles, that advantages enough were derived by Spain sufficient to compensate a greater or lesser sacrifice of her rights regarding said debts, since if such advantages were not derived the Spanish Commission had no necessity to sacrifice anything, for which reason it is clear that it could insist upon the recognition of its right.

This being the case, what have been the advantages offered to Spain, up to this moment, in the course of the conferences?

Since the date of that answer the negotiations for the treaty have advanced only one step, and this has consisted in asking Spain, without alleging any reason in support of this request when made, the cession to the United States of the Philippine Archipelago. Does the American Commission understand that this cession is an advantage for Spain? The Spanish Commissioners would not be surprised by hearing this question answered affirmatively, as certain phrases of the memorandum seem calculated to anticipate. But they do not need to say that they do not share that opinion.

The Spanish Commission would have been, therefore, justified in insisting, not indirectly, but directly and principally, upon its claims as to the transmission of the colonial obligations and debts. It has not done this, nor does it intend to do so at present; but this has not prevented nor does it prevent it now from not allowing to pass, without contradiction, supposed statements and affirmations, if only that a day may not come when it can be charged with having consented to them, because of failure to contradict them, and expressly refusing its assent thereto.

The American Commission affirms that Spain contracted (it does not say that it used the debt previously contracted) the greatest part of the Cuban debt "in an effort, first to conquer the Cuban insurgents, and then to oppose the United States," and then discoursing upon the same theme, it says, "that it has not been denied that a part of these loans was directly used to wage war against the United States." To make such statements it is indispensable to suppose that the dates of the creation of those debts are not known. One debt was contracted under the authority of the Decree of May 10, 1886, that is to say, eight years after the re-establishment of the peace in Cuba, and nine years before the fresh disturbances of the same in that island through suggestions and by means which now are known to the world. The second issue was authorized by Royal Decree of September 27, 1890, that is to say, twelve years after Cuba had found herself in a condition of perfect peace, and at the pinnacle of her prosperity, and five years before the work of her desolation began, through the new rebellion which more or less spontaneously broke out there. And the two Decrees explain also what were the reasons why the said issues were authorized, and what were the expenses to be met by them, the payment of deficiencies in previous and subsequent appropriation bills in the island being prominent among them. It is well known that these deficiencies were due to the great reduction of taxes made in Cuba by the mother country.

Will it ever be said that Spain, through some supernatural gift of divination, foresaw in 1886 and 1890 that in 1895 an insurrection was again to break out in Cuba, and that in 1898 the United States were to lend it their armed protection? Under no other hypothesis the correctness of the phrases of the American memorandum relating to this point could ever be admitted.

And so far as the expenses incurred by Spain owing to the war with the United States are concerned, without doubt the American Commission is unaware of the fact that on the 20th of April of the present year, when the hostilities began, the Spanish Government was still engaged in operations of credit, in the shape of bonds, with the direct guarantee of the custom houses of the Peninsula, to the amount of 1,000 millions of pesetas, as decided in 1896 and 1897, and in other operations to the amount of 223 millions of pesetas, as authorized on the 2d of April, 1898, with the special guarantee of the stamp and tobacco revenues in the Peninsula, as well as the revenue called *de consumo* in Spain,—

and that, in order to meet the expense of the war with the United States, a Royal Decree had been issued on the 31st of May in the present year, authorizing the creation of a 4 per cent perpetual domestic debt, to the amount of 1,000 millions of pesetas, out of which 806,785,000 were immediately negotiated. Upon acquaintance with these facts, it is to be supposed that the American Commission will not be willing to insist upon the statement so groundlessly made in its memorandum, as it will then understand that the expenses of the war with the United States have nothing to do with the Cuban colonial mortgage debt.

The American Commission advocates once more in its memorandum the strange theory that the Spanish colonies are not bound to pay the debt contracted by the mother country to put down the rebellions whether of few, or of many, of their inhabitants. But this time it reaches the extreme of putting such a singular doctrine under the shelter of common sense, by affirming that a doctrine to the contrary would be a threat to liberty and civilization.

Ah! if the colonists and the citizens of the Great Republic would have alleged, in justification of a rebellion,—or should allege in the future, in an incidental case, an emergency from which that powerful nation is certainly not exempted,—a theory of that kind,—would the American Government have ever accepted it? Will it ever accept it in the future? What is condemned not by common, but by moral sense, is the attempt to put all rebellion against legitimate authority under the shelter of liberty and civilization. Was Spain, or was she not, the legitimate sovereign of Cuba when the first insurrection broke out, and during the whole term of the second? Has any one ever dared to deny, or to doubt even, the sovereignty of Spain over that island at the time to which we are now referring? Were not the United States themselves, and their Government, those who day after day urged Spain to put down the rebellion, without excluding the use of arms, and re-establish as promptly as possible the peace in her colony? And if Spain complied with such demands, who, in the United States included, can deny the legitimate character of the expenses which, by virtue of that compliance, she necessarily incurred?

A doctrine of this nature, which the Spanish Commission, through considerations of respect, observed thus far by it, and which it has the duty to observe, does not deservedly characterize as it certainly would be by all the constituted Powers of the earth, cannot be advocated in the face of men, except from the standpoint that the authority of Spain was illegitimate, and that her sovereignty was only an arbitrary act of despotism. And is the crown of Spain characterized in this manner, concretely and specifically, for her domination in Cuba prior to the signing of the Washington Protocol? Can this be done above all by the very same nation which urged Spain to exercise her sovereign authority to conquer those who had risen in arms against her in the island?

Let us pass to another subject, as the present is too delicate to be treated with calm and serenity in a diplomatic discussion wherein any attempt is made to controvert it.

In the memorandum which we are now answering, the singular affirmation is made that the mortgage created by the two issues above named can be called more properly a subsidiary guarantee, and that the party principally bound to pay is the Spanish nation. Undoubtedly the American Commission in making this affirmation had not before its eyes Article II of the Royal Decree of May 10, 1886, authorizing the issue of 1,240,000 hypothecary bonds of the Island of Cuba, or the 2nd paragraph of Article II of the Royal Decree of September 27, 1890, authorizing the issue of 1,750,000 hypothecary bonds of the same island. Both texts read literally the same thing, and it will be sufficient for us to transcribe one of them. Their language is as follows:—"The new bonds shall have the direct (especial) guarantee of the customs revenue, stamp revenue of the Island of Cuba, direct and indirect taxes now levied or to be levied there in the future, and the subsidiary (general) guarantee of the Spanish nation. They shall be exempt from all ordinary and extraordinary taxes, etc."

Nor can the American Commission have seen any of the bonds issued under these authorizations, which are scattered everywhere in the world. Cuba included, and are owned by third parties and private individuals; had it seen them it might have read the following: "Direct (especial) guarantee of the customs revenue, stamp revenue of the Island of Cuba, direct or indirect taxes therein levied or to be levied hereafter, and the subsidiary (general) guarantee of the Spanish nation." "The Spanish Colonial Bank shall receive, in the Island of Cuba, through its agents there, or in Barcelona, through the Spanish Bank of Havana, the receipts of the custom houses of Cuba, and such amount thereof as may be necessary, according to the statements furnished on the back of the bonds, to meet the quarterly payment of interest and principal, shall be retained daily and in advance."

If, after this, the American Commission continues to understand that this

debt was not contracted as a debt secured by mortgage, and that this mortgage was not placed upon the customs revenues and other taxes of Cuba,—and further that these revenues were not pledged principally and primarily, and therefore prior to the Peninsular Treasury, to the payment of interest and principal, we shall have nothing to say. We are unable to prove what is self-evident.

Turning now to the bondholders and to the severity, in our opinion unjustified, with which they are treated in the American memorandum, we shall say that the duty to defend them does not belong to Spain. When they know what is the opinion entertained about them, it is to be supposed that they will defend themselves, for after all they will not need any great effort to demonstrate the justice of their cause.

So far as Spain is concerned, and here the Spanish Commission proceeds to answer categorically the questions propounded in the American memorandum, it is sufficient for her to defend the legitimacy of her action and her perfect right to create that debt that the mortgage with which it was secured,—and therefore the strict right vested in her not to pay either interest or principal, except upon proof of the insufficiency of the mortgaged revenues, out of which they should be primarily paid. If those who hold those revenues are not willing to comply with the obligations to the fulfilment of which said revenues were pledged, the responsibility therefor will belong to them, and not to Spain, who has neither the means to compel them to comply with that duty, nor is bound to do for the bondholders anything else than what she has honestly done up to now. But Spain, the Spanish Commission says again, (and this is the only thing that she has textually said, although the American memorandum seems to understand it differently,) cannot lend itself in this treaty with the United States, nor in any other treaty with any other Power, to do or to declare in her name anything which may mean, or imply, that she herself has doubts, and much less ignores or voluntarily abridges, so far as she is concerned, the mortgage rights of the bondholders. She has no efficient means to cause those who may become holders of the mortgaged revenues to respect those rights. Therefore she does not employ them; did she have them, she would employ them, if not through strict justice, at least through a moral duty, thus following the dictates of probity both public and private.

The Spanish Commissioners believe therefore to have answered categorically enough the questions propounded to them in this respect in the American memorandum, and this being done they proceed to occupy themselves with the principal point which is dealt with in that memorandum which refers to the sovereignty over the Philippine Archipelago.

According to the American memorandum the cession of the archipelago which is asked from Spain does not rest upon any agreement to that effect made in Article III of the Protocol, as was the case in regard to the Island of Porto Rico in Article II of the same; but on the fact that, according to the American Commission, the matter of cession by Spain to the United States of America of her sovereignty over those islands was included in the number of those relating to the Philippine Islands which were left to the free decision of the conference of Paris.

The Spanish Commission maintains that such a grave subject, undoubtedly the most important of all which it is called upon to discuss, far from having been entrusted to the Paris Conference, is shown by Article III of the Protocol to have been left beyond its scope, as said Article rests upon the basis that the sovereignty over that archipelago should continue to be vested in Spain.

The American Commission tries to find an argument in support of its views in the construction that it places upon the language of Article III, and also upon the negotiations which preceded the Protocol and culminated in its acceptance.

We shall examine with cold impartiality the reasonings upon which this thesis is founded.

The American Commission says that it is a principle of law that "when the result of some negotiations has been embodied in a written compact, the terms of such agreement shall settle the rights of the parties."

The Spanish Commission accepts this rule of interpretation of the treaties, if it has, as an indispensable condition, the fact that the terms of the agreement are clear, precise and of settled and indubitable meaning, because it must be understood in that case, that all the differences which presented themselves during the negotiations between the contracting states were set at rest by the clear, precise and explicit agreement entered into by them.

But, is this the case with the subject now discussed by the two Commissions?

Before answering this question, the Spanish Commission deems it to be advisable to transcribe once more the text of Article III of the Protocol, literally

and faithfully translated from its French original. It reads as follows: "The United States shall occupy the city, harbor and bay of Manila, pending the conclusion of a treaty of peace which shall determine the intervention (controle), disposition and government of the Philippine Islands."

The Spanish Commission does not know whether the American Commission is, or is not, conversant with the fact that when the Government of Madrid received from the Washington Secretary of State his dispatch of July 30, setting forth the conditions, upon the acceptance of which the United States were disposed to conclude the peace,—the third of which was subsequently transcribed without any change in the Protocol, and forms Article III thereof,—it sent a telegram to Mr. Cambon, Ambassador of France in Washington, dated August 1, in which, referring to this point, it literally said the following: "The third point in which the form of disposition of the Philippine Islands is determined seems to this Government to lack precision. It (the Spanish Government) has supplied the deficiency to be noticed in it, on the supposition that there is no question in regard to the permanent sovereignty of Spain over that archipelago, and that the temporary occupation of Manila, its harbor and its bay by the Federal Government shall last only the time which may be necessary for the two countries to reach an agreement as to administrative reforms." We have this dispatch at the disposal of the American Commission, should it wish to read it and study it.

Upon the receipt of this document Mr. Cambon had a conference (August 3) with the President of the American Republic, and the portion thereof which refers to the point now dealt with by the Spanish Commission was couched by the French Ambassador in his dispatch of the 4th of August in the following language: "I availed myself of this declaration to request the President to have the kindness to state as precisely as possible his intentions in regard to the Philippine Islands. On this point, I told him, the answer of the Federal Government is couched in terms that may lend themselves to all claims on the part of the United States, and consequently to all apprehensions of Spain in regard to her sovereignty." The President replied to him, as will be hereafter explained. But the Spanish Government, notwithstanding the language of the President, reiterated in its dispatch of August 7 the doubts entertained by it about the meaning of Article III. Useless reiteration. Neither then, nor before, nor afterwards, has the American Government ever consented to give a concrete form to the idea involved in the phrase "control, disposition and government" of the Philippine Islands, to be determined by the Paris Commission. Now, for the first time, it has come to give an explanation. In the memorandum to which the Spanish Commission is now giving an answer, the American Commission has set it forth. It says: "Certainly the word control was not used here in the sense of 'register' or 'inspection,' but in its broader sense of 'authority or command.' What word could be broader than 'disposition,' which has practically the same meaning in both the French and the English languages? We have in these words, then, authority over, dominion of, final and ultimate destination of the subject matter. What is government but the right of administration, or exercising sovereignty, the direction, the political management of a state? Either of these terms implies power of interfering with sovereignty. Taken together, they give the fullest scope in dealing with all power, governmental, territorial and administrative."

The explanation, besides being as it appears inopportune by reason of its tardiness, seems almost to be unsatisfactory. It occurs, at once, that if the American Government used those words in the sense aforesaid, which it never explained in spite of the repeated requests made to it for that purpose, what was the reason why it did not show at that time the frankness now displayed by its Commission? Why instead of stating that the Paris conference should determine the control, disposition and government of the Philippine Islands did it not say that said conference should decide about the sovereignty over said islands, by agreeing or disagreeing as to their cession to the United States, as now demanded by the American Commissioners, on the ground that such a cession is also embraced in those phrases? Would not this have been briefer, more explicit and more frank?

But, is it possible to accept the construction placed now, out of season, by the American Commissioners upon the said phrases? They said that the word "control" (controle in French) cannot be taken in the sense of register (investigation or inspection), but in the sense of authority or command. And why? Because this is the broadest meaning of the word in the English language. But the American Commissioners have failed to notice that the Protocol was also written in French, that the Secretary of State at Washington affixed his signature to the official copy so written of the instrument, and that the word "control" in French does not mean what "register or inspection" means in English.

investigation or inspection. But how can the American Commissioners fail to recognize that when a treaty has been officially drawn in two or more languages, its words cannot be given a sense different from the one which is common to them in those languages?

They also state that the word disposition means alienation. We do not deny it, although when the term is used in that sense it is always in connection with legal business in private civil life, because in French the most usual meaning of the word is "distribution according to a certain and determined order."

They affirm that the word government means the right of administering or exercising sovereignty; and although it is true that such a sense can be admitted, it is also true that the meaning of "manner of governing," or of "form which may be given to the government" cannot be rejected.

But whatever the sense may be in which the said three words were used in the third article of the Protocol, even if sufficient information could be found in the record of the negotiation to fix the true sense in which they were used, it is impossible not to see, as has been proved, that the said words do not possess in themselves a clear, precise meaning, incapable of lending itself to doubts or ambiguities. So it was already demonstrated by actual facts.

The Spanish Government and its representative in Washington, on the very ground that the said words lacked clearness, asked, although uselessly, for explanations. And who insisted with real stubbornness upon retaining such obscure phrases? It cannot be denied that it was the Government of Washington. Let the American Commissioners be pleased to read what the immortal Vattel, one of the greatest authorities on all things referring to international relations, says in his *Law of Nations*, Vol. III, page 197. "The doubt must be resolved against the one who has given the law in the treaty, because he is in some manner the one who dictated it, and it is his fault if he has not expressed himself with more clearness. By extending or restricting the meaning of the words in the sense which is less favorable, no injury is done to him, other than that which he was willing to incur. But by making the interpretation otherwise the risk would be run to convert vague or ambiguous terms into bonds to tie up the feeble of the contracting parties, who was compelled to receive what the stronger dictated."

The Spanish Commission has just stated that the record of the negotiations contains sufficient data to fix the true sense of those three very memorable words.

The American Commission, on its part, affirms the same thing. Let us see, then, to which of the two contradictory constructions, adhered to by either Commission, must be given preference.

It is stated in the American memorandum as the basis upon which, as has already been said, the whole reckoning thereof is founded, that in Article III of the Protocol the point relating to the sovereignty over the Philippine Archipelago was left to the free decision of the Paris conference to which the framing of the treaty of peace was entrusted. But has the American Commission taken into consideration, when making such a grave affirmation, that the Washington Secretary of State, in his dispatch of July 30 last, in which he communicated to the Spanish Government the three conditions imposed upon the latter by the United States, before consenting to re-establish peace, and in which Article III was, as before said, couched in the same language which was afterwards used in the Protocol, provided also for the appointment of Commissioners to frame the treaty of peace, and fixed and circumscribed their powers in that respect? In that dispatch the following paragraph occurs: "If the terms hereby offered are accepted in their entirety, Commissioners will be named by the United States to meet similarly authorized Commissioners on the part of Spain for the purpose of settling the details of the treaty of peace and signing and delivering it under the terms above indicated." Does the American Commission understand that the unexpected demand of the cession by Spain of an immense territory, the area of which exceeds 300,000 square kilometres, and whose population is over 9,000,000 of inhabitants, is a detail in this treaty of peace? Do they understand that the acquisition of an archipelago, whose importance as a factor in the near future for the peace of the world is no secret for any one, can be

But let us go to the record, as the American Commission does, and search for light as to the meaning of those ambiguous words.

The American Commission narrates how the negotiations began. We agree with its narrative up to the point relating to the first conference between Mr. Cambon and the President of the United States. The memorandum says that in that conference the President said in regard to the Philippines that the note (the cited note of July 30) expressed the purposes of his Government, and that the final disposition to be made of those islands should depend upon the treaty to be negotiated by Commissioners. That after a subsequent discussion in which the President reiterated that the treaty should determine the future of the Philippine Islands, Article III, was read in which it was stated that the Commissioners should decide about the

control, the possession and the government of those islands; that Mr. Cambon proposed the change of the word possession into the word condition, because he thought the former could be construed by Spain as threatening and severe; that the President refused to consent to the proposed change, but at last was induced to admit the word disposition in place of the word possession, which, according to the American Commissioners (we do not know whether on their own personal opinion or on opinion expressed by the President) did not change the meaning, and which, for having so much amplitude, might also embrace possession.

Let us see now how Mr. Cambon relates what happened in that conference. In his dispatch of the 31st of July he said to the Spanish Government what follows:

"The demands formulated in Article III (I said to the President) are apt to endanger in Madrid the success of this preliminary negotiation, especially if the word possession is retained in conjunction with control and government of the Philippine Islands, as it seems to put in doubt from this moment the sovereignty of Spain over that colony. You will notice, the President of the Republic then told me, that my demands as set forth in Articles I and II, admit of no discussion; I leave it to the negotiators to decide the question of the Philippine Islands. If the American forces (let full attention be paid to these phrases) retain up to now their respective positions, it is in obedience to a duty imposed upon me, in favor of residents and foreigners, by the progress. . . (Here are some words which could not be translated, but which are easily understood to mean the Tagalo Insurrection.) Seeing that the President of the Republic was firm in not changing the terms of Article III, I made such an urgent appeal to his generosity as to secure his order to use the word disposition instead of possession, as the former does not prejudge the result of the negotiation and has not the comprehensive meaning which belongs to the other word."

The American Commissioners will notice, no doubt, that between the two relations there are many differences. In their own narration nothing is said in regard to the only reason alleged by the President not to cause at once the American forces to be withdrawn from the archipelago, a reason which reveals that the President at that moment was very far from thinking that the sovereignty over that territory should be asked to be transferred to the United States. According to the American narration the word disposition was accepted because it contained the meaning of the word possession. But according to Mr. Cambon's dispatch the word disposition accepted in place of possession changed the comprehensive meaning of the article. And be the American Commission or Mr. Cambon right or wrong, the result is that the latter accepted the change because he understood that all question about the sovereignty of Spain over the Philippine Islands was thereby eliminated.

On Friday the 3d of August the President held another conference with Mr. Cambon. The memorandum reads that the latter stated at that time that Spain insisted upon the point that her sovereignty should not be interfered with; that the President replied that the disposition of the Philippine Islands should depend upon the treaty to be negotiated; and that he could not make any change in the terms previously proposed.

Let us see now how Mr. Cambon narrates, in his dispatch of August 4 to the Spanish Minister of State, what passed at this interview.

"Mr. McKinley showed himself unyielding (regarding the cession of Porto Rico), and he repeated that the question of the Philippines was the only one which was not as yet finally settled in his mind." After narrating his insistence with respect to the phrases which are already embodied in this memorandum, Mr. Cambon continues: "Mr. McKinley answered me: 'I do not want any misunderstanding to remain on this subject; the negotiators of the two countries shall be the ones to be called upon to decide what are to be (note this) the permanent advantages we shall ask for in the archipelago, and, finally, those to decide the intervention (control), disposition and government of the Philippine Islands. And,' he added, 'the Government of Madrid can rest assured that up to the present nothing against Spain has been settled a priori in my own mind, as I myself consider that nothing is decided against the United States.'" (Verbatim.)

Compare one narration with the other. That of the American memorandum confined itself to the statement that the President had said that the disposition of the Philippine Islands should depend upon the treaty, and that he could not make any change in the words. But it omits the second and most important part of Mr. Cambon's conversation as narrated by him, although it contains information capable of removing all doubt in regard to this question. It is to be noticed, in the first place, that while the word sovereignty used in connection with the Philippine Islands is carefully avoided, both in this answer and in the former one and in the notes of the American Government, the same pains are taken by the Spanish Government and by its representative in Washington to use the very same words and unceasingly repeat that the Spanish sovereignty was not under discussion. Let this remark be united to the others already made in regard to the persistent and clear although implied refusal to explain the meaning of the words above mentioned.

But in spite of all this, the President said, and the American Commission does not categorically deny it in its memorandum, that the Paris conference should be the only one called upon to decide as to the permanent advantages to be asked by the United States in the Philippine Archipelago, and as to the control, disposition and government of the islands.

The memorandum says that the President did not confine himself to speaking of permanent advantages. It is true that the Spanish Commission has not said, nor does it say now, that he confined himself to that point, for he added what has just been referred to. But what has this to do with ignoring the meaning of the words of the President? If his mind, already fully made up at that time, was to ask of the conference not merely one but several permanent advantages to be enjoyed by the United States in the archipelago, it is self-evident that he did not think of asking for the sovereignty. Could the latter ever be considered as a permanent advantage of the United States in those islands? And even though so singular a hypothesis were upheld, how could the plural number used by the President of the United States be properly explained? To this observation already made in the preceding paper of the Spanish Commission no answer has been given in the American memorandum, and the reason is that none can be given which can harmonize with the purposes it is there attempted to uphold.

We cannot occupy ourselves with the indications made in the memorandum about the different languages spoken by both interlocutors in the aforesaid conferences. Such a circumstance cannot impart any probability to the supposition that the President did not express, not an incidental idea, but the important and capital statements which Mr. Cambon asserts he heard. If Mr. Cambon did not understand what the President said, although, as stated in the Memorandum, he had at his side his own Secretary who understands and speaks the English language, nevertheless he cannot be supposed to have attributed to him, without deliberately violating truth, such positive language as that recorded in his despatch.

Let us pass now to the note of the Spanish Government of August 7. The American Commission concurs with the Spanish that in said note the Government of Madrid, upon stating that it accepted Article III, reserved a priori its sovereignty over the Philippine Archipelago; therefore we deem it unnecessary again to transcribe its contents verbatim. The only difference existing between the two Commissions lies in that while the Spanish Commission asserts, and reiterates this assertion, that in the note of its Government, on referring to the sovereignty therein reserved for Spain, the adjective "entire" or "whole" was employed, the American Commission says that there is no such adjective in the English translation of the note which Mr. Cambon delivered to the Government of Washington. We have the copy, not the translation, as it is called in the American memorandum, of the original note of the Spanish Government, which we place at the disposal of the American Commission. Therein appears the adjective. If when the translation thereof into English was made in Washington it was omitted, it is a matter with which the American Commission is acquainted, as it has seen such translation; but the Spanish Commission, who never had knowledge of it, cannot but be ignorant of it. The difference is of no importance whatever, since, leaving the said adjective out of the question, the truth is, and the American Commission acknowledges it, that the Spanish Government reserved therein a priori its sovereignty over the Philippines, and that it only accepted Article III with this reservation. And if the Spanish Government did not change its mind afterwards—and this in fact is not asserted, nor would such an assertion be possible, in the American memorandum—the result must always be that the Protocol and its 3d Article do not in good law bind the Spanish Government save with the express reservation it made on accepting it, and which it did not subsequently withdraw.

But in the American memorandum, doubtless recognizing the incontrovertible force of the consequence which grew out of the Protocol having been signed without the Government of Washington, once apprised of such reservation, making any objection thereto, it is stated that the President of the Union as well as his Secretary of State, on hearing the said note read, remarked that it was vague and indefinite, purporting to accept the terms of that of the United States, while it required some modification, and, as regards the Philippines, while in one paragraph it stated the acceptance of the article, in another it seemed to retain the full right of sovereignty. The argument is skilful, but unfortunately its accuracy is not as apparent as its skilfulness. It is true that the said gentlemen showed their dissatisfaction upon the note being read to them. What is apparently inaccurate, judging from what Mr. Cambon then said, is that the cause of the dissatisfaction was what was said, not vaguely and indefinitely, but clearly and explicitly, in the note as to the reservation which Spain made of her sovereignty over the archipelago. The very American memorandum transcribed the paragraph in interest of the note, and therein this reservation appears, not vague and uncertain, but express, clear and explicit. The cause for his dissatisfaction at the time given by the President was a very different

one, which Mr. Cambon refers to in the following paragraph from his despatch of August 10. Here it is:

"Duke: Again has it been at the White House, in the presence of Mr. McKinley, and at his express request, that I have communicated to the Secretary of State the telegram (the note aforesaid) of August 7, in which Your Excellency declares that the Government of Spain accepts the conditions imposed by the United States. This reading visibly displeased the President of the Republic and the Secretary of State. After a long silence Mr. McKinley said to me: 'I had asked of Spain the cession, and consequently the immediate evacuation [we have been unable to ascertain when this immediate evacuation was requested] of the Islands of Cuba and Porto Rico. Instead of the categorical acceptance I expected, the Spanish Government addresses me a note in which it invokes the necessity of obtaining the approval of the Cortes. I cannot lend myself to going into these considerations of an internal nature.' I observed that the Government of Her Majesty in complying with its constitutional duties did no more than follow the President upon whom like obligations are imposed, and that in his reply of July 30 he had expressly reserved the ratification by the Federal Senate." (This is the fact, and so it appears from said despatch of July 30.)

Neither the President nor his Secretary of State advanced any reason for their displeasure other than the foregoing, and, according to Mr. Cambon, these gentlemen said nothing during the conversation respecting the said reservation made by Spain of her sovereignty over the archipelago, nor regarding anything else whatever save the reservation of the Spanish Government as to the approval of the Cortes.

Thus the President ended by answering Mr. Cambon, who questioned him as to the pledges of sincerity Spain might give, as follows: "There might be a means of putting an end to all misunderstanding; we might draw up a project which shall reproduce the conditions proposed to Spain in the same terms in which I have already framed them, [up to this time this was in effect all that had been agreed upon] and which shall establish the terms within which there shall be named on the one hand the Plenipotentiaries charged with negotiating the treaty of peace in Paris, and on the other the special Commissioners intrusted with the determining of the details for the evacuation of Cuba and Porto Rico." (The incorporation of this was overlooked in the note of July 30, and this alone would have been sufficient to explain the change in the framing of the conditions of peace.)

See, then, if there is not an immense difference between what is stated in the American memorandum and what Mr. Cambon said to the Spanish Government in his note of August 10, or immediately after having been present at so important a conference, and when, consequently, what occurred thereat was fresh in his mind. Doing justice to the absolute truthfulness of the American Commissioners, their account of that conference, three months after it was held, cannot be preferred by the Spanish Commissioners to that of Hon. Mr. Cambon, who gave his immediately after the happening of the event, which he so minutely recounted in his despatch.

It is denied in the American memorandum that the Secretary of State of Washington stated in his note of August 10 to Mr. Cambon, as the Spanish Commission had asserted, that the note of the Government of Madrid (that of August 7) contained in its spirit an acceptance by Spain of the conditions imposed by the United States, and in this connection the said note is inserted literally.

The Spanish Commission corrects its former assertion, accommodating it to the above. But it is due to it to say that on making the assertion it referred to the note of Mr. Cambon of August 11, which begins with the paragraph following:

"Duke: Upon transmitting to me the draft of the Protocol, the text of which I have wired Your Excellency, the Secretary of State addressed me a note which may be epitomized as follows: Although the note delivered yesterday at the White House conveys in its spirit an acceptance by Spain of the conditions proposed by the United States, in its form it does not so specify with sufficient explicitness, owing doubtless to its having to be translated and put in cipher several times."

These words, which may well be explained without detracting from the unquestioned veracity of the Hon. Mr. Cambon, led, as they could not but do, the Spanish Commissioners into error. They nobly comply with the duty of so admitting.

But after all the difference is unimportant. The Secretary of State (and this certainly does appear from his own letter) raised no objection to the Spanish note of August 7, other than that it was not entirely explicit, undoubtedly due to the various transformations which it had undergone. But the fact is that the Secretary of State could not possibly have directed his objection to the paragraph of said note, perfectly well translated into English (save the adjective "entire"), which is copied in the American memorandum, and which it is said was read to the President of the American Union and his Secretary of State, wherein the Spanish Government clearly, explicitly and conclusively reserves a priori its sovereignty over the Philippines. All the remaining contents of the note may be little explicit, if it is wished so to assert, but that reservation was not, surely. Therefore the note to which we refer does not contradict the statement we are supporting, that the said reservation, of which the Government of Washington was opportunely apprised and which appears so clearly

in the English translation in its possession, was not by it contradicted, nor did it serve as a reason for employing the new form of Protocol as a means of solemnizing the agreement upon the bases of peace. This reason clearly stands out in the documents already examined which said negotiations embody.

In view of the foregoing, it seems to us that whatever may have been the real intentions of the Government of Washington, its acts and its written and spoken words do not suffice to overcome the assertion we make that Spain accepted the 8d article of the Protocol in the sense communicated to that Government, and not contradicted by it, that its sovereignty over the Philippines was preserved ⁽¹⁾ (reserved) a priori, since their control, disposition and government, which were to be determined by the Paris conference, referred only to their internal regime. And this, of itself, would be sufficient to maintain without fear of successful contradiction that this conference cannot consider, nor has it the power to consider, the cession asked by the United States, even though in the hypothesis to our mind impossible that the proof, drawn from the very words of the President of the Union, which we have attempted to furnish and we think we have furnished, that in his own mind at that time the said sovereignty was beyond all subsequent discussion, should be destroyed.

What is the Spanish Commission to say with respect to the words it reads in the American memorandum which seem to seek in a war indemnity a ground for their present request; as though this were not excluded from discussion, and it had not been acknowledged by the very American Commission that it had been agreed to cover this indemnity for the expenses of the war, and not only these, but also the claims of American citizens, the majority of which, if not all, natives of Cuba, although apparently later naturalized in the United States, who had suffered injuries in the last insurrection, by the cession of Porto Rico, the other West Indies, and the Island of Guam in the Mariana?

Or, is this indemnity to be an open account in which it shall be proper to ask all that remains to Spain, including the Peninsula itself?

Certainly the limiting of the indemnity to the Island of Guam in the East is another indication which proves that the United States did not think at the time of the Philippine Islands. If they did, is it conceivable that they would then claim, at the outset, a small and insignificant island and fail to claim the immense Philippine Empire which was so near to it?

Be it acknowledged, then, that the demand or request for the Philippine Archipelago which is made for the United States in the form and under the conditions set forth in the American proposition, lacks foundations. While this cession is claimed in such form and under such conditions, the Spanish Commission cannot but decline it.

Memorandum in Support of the Last Spanish Proposal.

It will be remembered that in that proposal, the Spanish Commissioners asked that the American Commissioners should present another adjusting the same to the stipulations of Articles III and VI of the Protocol, that is, expounding the form of intervention, disposition and government which should be established by Spain in the Philippines, the return of the city, bay and harbor of Manila, the release of its garrison, now held as prisoners, the refunding of the public moneys, revenues and imposts which might have been collected up to the time when the city might be delivered, and the undertaking or say the acknowledgment on the part of the United States of the obligation to indemnify Spain for the detention of the troops that garrisoned the city when it surrendered on the 14th of August last.

The American Commission has rejected that proposal because in its judgment the aforesaid Articles III and VI of the Protocol do not demand that it be presented.

With respect to the first part which refers to the intervention, disposition and government of the archipelago, all attempt to demonstrate here that Article III is not in accordance with the American proposal which, instead of addressing itself to the internal regime of these islands, asks their cession to the United States, would be a mere repetition of the statements set forth by the Spanish Commission in the preceding part of this paper.

It is believed that its arguments show with the clearness of noon-day that the cession of these islands which in every respect foreign to the provisions in the Washington agreement is one thing, and that the internal regime of the said islands, which under the aforesaid Article III may and must be a matter for the treaty of peace, is another.

The Spanish Commissioners would then be remiss in their own convictions if they did not persist in requesting the American Commission to present a proposal

(1) The Spanish text here is "a priori quedaba a salvo la soberania,"—in English "the sovereignty was a priori or from the beginning left in safety, or preserved, or conserved." In the foregoing page the Spanish text instead of "quedaba a salvo" reads *reserva*. [Note of translator.]

concerning said regime in which the 3rd Article of the said agreement will remain unbroken, not only in its meaning but also in its intent.

In the first paragraph of the proposal with especial reference to the capture of Manila the immediate return to Spain of the city, its bay and harbor is demanded.

By way of rectifying here one of the misapprehensions of fact that abound in the American memorandum, we have to put it on record that the Spanish proposal did not demand that immediate return, nor the immediate execution of anything set forth in the following paragraphs of the proposition, which contain nothing to be instantly done. The immediate delivery was, as it could not otherwise be, to be effected upon the conclusion of the treaty of peace. So conclusive is the proof that the Spanish Commissioners were bound to suppose that they should never be called upon to make this rectification. The first paragraph of the aforesaid proposal reads as follows: "The Spanish Commissioners therefore in accordance with the express stipulations of the Protocol understand that the treaty of peace must provide for, first the delivery, etc." If this was to be agreed upon in the treaty of peace, how can it be supposed that the Spanish Commission should ask that the delivery be effected before it was agreed on?

We shall now clear this memorandum of difficulties by making two rectifications of a personal character before taking up the discussion of the point bearing on the surrender and capitulation of Manila and their consequences. There is not in the Spanish memorandum, to which the last American memorandum is a reply, a single sentence that assails or wounds the respectability of General Merritt and Admiral Dewey. The American memorandum would intimate that the idea is suggested with more or less ability in the Spanish memorandum that the military commanders of the Union conquered the city of Manila by the force of arms on the 13th of August when they already knew that the suspension of hostilities had been agreed on. This is an error. The Spanish Commission did not use, is not in the habit of using, cunning of any kind to conceal its sentiments. If it had believed that these generals had broken the armistice after receiving notice of its conclusion, it would have said so openly. By so doing it would not have been lacking in the regard which these commanders deserve, in the same way as it occurred to no one in 1871 that it was a lacking of the regard due to the German General de Manteuffel to charge him with the offence which he committed when, after a partial armistice between the French and German forces had been signed, he availed himself of the mistake made by General Clinohant upon the extension of the said armistice, and surrendered the army corps under his command and compelled it to take refuge in Switzerland. We have said nothing, we have nothing to say against the personal behavior of these two commanders. On the contrary we can state a fact that redounds to the credit of the fine sentiments of the Admiral. On the 1st of May, he sent to the Governor-General of Manila from the Olympia, perhaps under the intoxicating influence of victory, a communication which read as follows: "If all the vessels, torpedo boats and war ships under the Spanish flag do not surrender immediately Manila will be destroyed."

We presume that this communication will have no place in the chapter of history in which are recorded the services rendered to the cause of humanity of which there is so much ostentation in these days. But we take pleasure in acknowledging that the author of this draconian order, refrained, in the spontaneousness of his kind feelings, from carrying it out, although he might have had the power to attempt it.

This cannot prevent us from not carrying the favorable opinion to which the honorable commanders are personally entitled to the point of considering ourselves obliged to them for their deliberately postponing the surrender of the city until the 18th of August for the purpose of "protecting the city and the Spanish residents against the awful vengeance of the insurgents." This purpose does not seem comprehensible; in the early days of May the insurgents were not yet besieging from the land side the city, which was only blockaded from the bay by the American fleet. They began afterwards and not with the same numbers of forces from the outset, since these were increased little by little, until they made up the masses of insurgents who were in front of the trenches of defence on the day of the surrender. So that if the American commanders had not taken possession of the city until then for the reason above mentioned, they should much less have done so thereafter. But besides this, it is demonstrated by the fact that such a danger did not exist, for it could at all times have been avoided by the American forces which upon the surrender of Manila should have landed in and garrisoned the city, in the same way as it was avoided after the 14th of August, in spite of the fact that as above stated the insurgents in arms who prevailed outside of the city were in larger numbers.

It may thus be seen how it is no sin of ingratitude to fall in recognizing that supposed service at the hands of the aforesaid commanders, without this being in any way a hindrance to the favorable opinion to which their personal behavior entitled them.

On the other hand, the American memorandum in its reference to the unexpected surrender and the exit from Manila of the general in command of the Spanish

troops on the evening before the surrender, uses a word altogether irreconcilable with the honor of a soldier. Whatever may have been the conduct of that commander, he is under the protection of the law and tribunals of his country, which will look into his actions for the purpose of approval or disapproval as the case may require; but he is not at the mercy of any one else, and, above all, of opinions of an official character that would be delivered abroad and by foreigners.

We have laid down in the second part of this memorandum that in the so often cited 8d article of the Protocol the occupation by the forces of the United States of the city, harbor and bay of Manila until the conclusion of the treaty of peace had been agreed upon merely by way of a guaranty. It is therein demonstrated that the Government of Madrid accepted this occupation in that sense, without express contradiction on the part of the Government of Washington.

It seems that in the American memorandum it is endeavored to inject the idea that such occupation should likewise have the character of an indemnity for the expenses of the war based on the fact that in the note of July 30, in which the Secretary of State communicated to the Spanish Government the three conditions upon which peace could be restored, after saying in the second that by way of such indemnity Spain must cede Porto Rico, the other West Indies and the Island of Guam, the 3d article began with the words: "On similar grounds the United States is entitled to occupy the city of Manila, etc." At first sight the argument is not wanting in force; but the American Commissioners know perfectly well that this is only apparent, and that what did occur proves absolutely the contrary. Although the Spanish Government in its note of August 7 and its representative in the conferences with the President of the Republic, stated and insisted that the occupation of Manila was to have no character other than that of a mere guaranty, the said words are suppressed in the Protocol. So that the latter failed to express any connection between the future occupation of said place and the payment of the war indemnity, and moreover it failed to state that the United States were already entitled to occupy it. Doubtless, for this reason, the idea is only hinted at, but not developed, nor categorically asserted in the American memorandum.

The Spanish Commissioners acknowledge having been agreeably surprised on noticing that in this document the American Commissioners do not allege, as had been alleged by the American Government on replying to the note of the Spanish Government of September 7 last, the peremptory reason that the suspension of hostilities, according to the 6th Article of the Protocol, ought not to go into effect immediately upon the concluding and signing of this instrument, but after notice thereof to the commanders of the hostile forces, an allegation which was made notwithstanding the fact that a point of such importance had been expounded, reasoned and demonstrated with all care in the Spanish document to which that reply was given. This action of the American Commissioners proves their sound judgment and learning in the premises, because it is equivalent to an implied recognition of the validity of the Spanish view on the subject, which, after all, is elementary and which as a current doctrine has never been attacked by any one.

Nevertheless they endeavor, upon arguments analogous to those set forth in the said reply of the Government of the United States to the note of the Government of Madrid of September 7 last, to invalidate the Spanish claim as to the capitulation of Manila, for being tardily made. The Spanish Commissioners are unable to see the force of this argument. The Government of Madrid formulated this claim with every solemnity in the said note, or in other words, twenty-three days after the capitulation of Manila. What laws or practice justify holding a claim of this kind as forfeited when not presented before the twenty-third day subsequent to the act giving rise to it?

Entering into the field of the intentions of the Spanish Government, it is stated further that the latter supposed that the above act of war had been perfectly correct, when a few days later it requested of the American Government permission to transport provisions to the Philippines and reestablish its regular mail service. When this occurred, the Spanish Government was still ignorant of the events which had taken place on the 14th of that month in Manila. The American Commission also leaves it to be understood that this is so. But even if the Spanish Government had been cognizant of those events, what permission is that which it is supposed the Spanish Government requested? What happened was only what could not fail to occur between Governments which, although enemies, observe at all times the duties which uprightness imposes upon all.

The status quo growing out of the suspension of hostilities prohibited each of the belligerents from improving his situation to the prejudice of the other while such status lasted. The Spanish Government, like any other which does not wish to fall in its said duties, was bound to communicate to the American Government, acting in concert with it, the re-establishment of the service which existed prior to the war. The Government of Washington acted in the same way when on August 16 it requested the consent of the Government of Madrid to re-establish the telegraphic service between Manila and Hong Kong.

Let it be acknowledged then that the claim of the Spanish Government was

lodged in time, and that even if it had not been then presented, its Commission was authorized to make it now, since it is empowered to ask for everything that shall lead to a faithful and strict carrying out of the convention of Washington.

It is therefore settled, since it has not been contradicted in the American memorandum to which this is a reply, that the suspension of hostilities agreed upon in the 6th Article of the Protocol went into legal effect immediately after the latter was signed on the afternoon of August 12 of this year. And let it be borne in mind that "if there is one rule of the law of war more clear and peremptory than another, it is that compacts between enemies, such as truces and capitulations, shall be faithfully adhered to, and their non-observance is denounced as being manifestly at variance with the true interest and duty, not only of the immediate parties, but of all mankind." The American Commissioners will not repudiate these words as they are those of their learned countryman, the eminent Wharton. In his Digest of International Law, made up of passages taken from Presidents, Secretaries of State, decisions of Federal Courts, and opinions of Attorneys General.

Have the provisions of the 6th Article of the Protocol been observed with this scrupulousness? On the 13th day of August the city of Manila was bombarded and on the 14th it surrendered.

The Spanish Commissioners have no reason whatever for asserting that the Commanders of the American forces knew that the hostilities were suspended. But it is a fact that the said hostile act was executed after this suspension.

And in this connection the Spanish Commissioners have to complete the short history recounted in the American Memorandum, regarding the reestablishing of the Manila cable. It is stated therein that it was the Government of Washington which, on August 16, through a note to the Ambassador of France, requested the consent of the Spanish Government to the re-establishment of telegraphic communication between that place and Hong Kong. This is true, but so also is what is about to be related. The American Admiral had cut the said cable at the beginning of the campaign. After several fruitless efforts of the Spanish Director General of Posts and Telegraphs with the concessionary company looking to the re-establishment of its service, on July 9 last the said Director insisted on the re-establishment, agreeing on the part of Spain to the absolute neutrality of the service. The company brought this proposal to the notice of the Ambassador of the United States in London, in order also to obtain his consent. But the latter on the 16th of the same month replied that his Government preferred that it remain cut. It results from this that if there was no direct communication with Manila, via Hong Kong, on August 12, when the Protocol was signed, it was due to the Government of Washington, which one month before had opposed its re-establishment. This is another reason, were it necessary (which it is not) to prove that the ignorance of the American commanders, when attacking the place on August 13, of the suspension of hostilities, not only cannot serve as a reason for the United States to profit by the act of war then executed in violation of what their Government had agreed to the previous day, but furnishes a ground upon which to base a claim for the unjustified damage the said act inflicted upon the other belligerent party.

All the arguments set forth in the American memorandum as to the legal character it is there endeavored to give to the surrender and capitulation of Manila and to the acts since then executed in the city and even outside of it, by the commanders of the military forces of the Union, may be reduced to the following affirmations:

FIRST. The legal character of the said capitulation is the same as that which would correspond to the peaceful surrender of the place, pursuant to the stipulations of Article III of the Protocol, and therefore the rights which the belligerent party has in the place he occupies as a guaranty are the same as he would have if he occupied it through an act of conquest in an act of war; and

SECOND. The occupation of Manila, its harbor and bay, stipulated in Article III of the Protocol, was a military occupation.

The Spanish Commission would never have believed that it would have to correct such grave errors, had it not seen them written in the American memorandum.

It is elementary on the subject that the occupation of a place or of a territory, agreed upon by belligerent parties that it may serve as a guaranty for the stipulations of a treaty, or the performance of an obligation resting on the party possessing the sovereignty over the place or territory occupied, has not and cannot have any title other than that in the convention in which it is stipulated. But the title to occupation by main force of a place or territory which surrenders through an act of war, has a special name, which is capitulation. And to so denominate what was agreed on in the Protocol in order thereby to bring under its terms the illegal capitulation of Manila after the signing of that instrument, is an error into which no one up to this time has officially or scientifically fallen, and which neither the technical nor ordinary meaning of the word capitulation would admit. The peaceful occupation as a guaranty conveys no more right to the occupying party than of establishing the garrisons or maintaining the military forces he may deem necessary, in the place or territory, to retain it in his possession, until the performance of the principal obliga-

tion of which the occupation is the guaranty. It is natural that the provisioning of the army of occupation should be at the expense of the sovereign of the territory occupied. But although this provisioning is a natural condition, it is not essential to the convention. Therefore in the most prominent cases which have arisen of occupation of this kind the occupying party took good care expressly to stipulate the obligation to provision. Well known are the cases of occupation by way of guaranty of several departments of France which occurred in 1815 and in 1871, the former at the end of the wars of the Empire and the latter at the conclusion of the Franco-Prussian war. There it was expressly stipulated that the maintenance of the army of occupation should be at the expense of the French Government. This was not done in Article III of the Protocol of Washington.

All the other rights of sovereignty, signally the collection of revenues and public taxes, continue in the peaceful possession of the sovereign of the territory occupied. The party occupant must religiously respect such rights. The legitimacy of his acts does not extend beyond what may be necessary to meet the ends of the occupation.

From these elementary principles, which for the present case do not need to be enlarged upon, it results that the United States, pursuant to the stipulations of Article III of the Protocol, has no further right than to retain in its possession until the conclusion of the treaty of peace the city, harbor and bay of Manila as a guaranty of the engagements of said Protocol, and, therefore, no more than the right to garrison the said city, bay and harbor with the necessary forces of its army and navy, but respecting the exercise of the sovereignty of Spain over the same in everything else compatible with this right to garrison, which is the proper designation of a guaranty occupation.

But the occupation of a city or territory through an act of war gives fuller rights to the belligerent who has taken forcible possession of one or the other. He does not acquire, it is true, through conquest, the right of sovereignty over the conquered territory, but he does acquire the possession and temporary exercise of this sovereignty. While the occupation lasts the prerogatives of the sovereign, political, financial, and even executive, may be exercised by the occupant, but always with the moderation required by the respect due the rights of the pacific inhabitants, since nowadays war is not waged between the peoples, but between the armed forces of the belligerent states.

What goes before suffices to bring out the capital difference which precludes any one from confounding the peaceful guaranty occupation with the belligerent occupation or conquest. On what ground does the United States persist after the 14th of August in occupying the city, harbor and bay of Manila? On the ground of belligerent occupation, having taken the city by force after the Protocol was signed. On what ground has the United States the exclusive right to occupy that city, bay and harbor? On the ground of a peaceful guaranty occupation, and nothing more than this, pursuant to the stipulations of Article III of the said compact. How, then, can it be asserted that the character of such occupation is immaterial in this case?

It is needless to lay further stress upon one of the most elementary points in the matter of the international law of war.

The second error that is displayed in the American memorandum consists in supposing that the occupation agreed to in the Protocol was a military one. Those who understand this expression in the sense of occupation with military forces there can have no doubt whatever in applying the same denomination to these two kinds of occupation, although they are so different. But for those who, using the technical term sanctioned by science and by the treaties, call military occupation only that which is belligerent, or effected by force, the occupation agreed to in the Protocol cannot be termed a military one.

It is therefore useless to endeavor to bring under a common denomination acts which are essentially different and whose lawful consequences have never been confounded. The occupation of the city, bay and harbor of Manila granted to the United States by the Washington agreement, is not a military or belligerent occupation, from which can lawfully be derived the rights and faculties which are inherent therein.

It cannot be doubted that the commanders of the American forces in the Philippines fell into the same error as the memorandum. One can understand that once in possession of the place and while they had no notice of the suspension of hostilities they should have commenced to exercise all the rights and privileges of a military or belligerent occupant. But the American memorandum admits that on the 16th of August these commanders were advised of the stipulated suspension of hostilities. Notwithstanding this, they continued to exercise these rights and privileges, which they did not possess, and which they ought to have known they did not possess. On that date the machinery of Spanish administration was still in operation. It was on the 16th of August that the American forces began to take possession *manu militari* of that machinery, of the public moneys, revenues and imposts, and also to hold as prisoners the Spanish troops that had surrendered on the 14th.

We believe it unnecessary to insist any longer upon the refutation of errors of

such gravity and importance, for which a single explanation can be found only in the sad and dire necessity of using them as the only means of defence on a point which is battered from all quarters.

And as we have been unable to come across any argument in the American memorandum more substantial than those referred to, among those that were advanced against the Spanish proposal, this Commission considers it its duty to support it and set forth that it cannot concur in the conclusion with which the memorandum closes.

The Spanish Commission might here put an end to this paper, were it not for the earnest desire with which it is animated of seeking on its part some means of removing the obstacles which are now standing in the way of the work of peace entrusted to these conferences, and of facilitating to both Commissions the fulfilment of a charge which cannot but be in perfect harmony with the sentiments of humanity and patriotism which surely inspire them both in the same degree.

Whether the interpretation of Articles III and VI of the Protocol as given by the American Commission, or as insisted upon by the Spanish Commission, is accepted, the fact remains unfortunately that a situation is created which can be settled only by the good faith of both parties. Be it because the conference of Paris has no powers to consider the question concerning the sovereignty over the Philippine Archipelago, in the manner and form proposed by the American Commission; be it because even though it had such powers, it also would have to enjoy the natural and legitimate freedom of exercising them in the sense dictated by their conscience to the members thereof—the real fact is that as the opinion of the Joint Commission is equally divided on the subject, the solution of the difficulty becomes impossible.

The American Commission will surely not contend that in the event of conflict, or tying of its vote with that of the Spanish Commission, theirs should prevail and be given the character of a decision of the Joint Commission.

And inasmuch as the United States do not claim anything more than a recognition of the right which, according to them, they have under the Protocol to ask the sovereignty over the archipelago, but do not go to the extreme of saying that they also have the right to demand of the conference that their petition be acceded to, and force the same upon it as if it were an order, the impossibility of the petition of the American Government being complied with, and consequently of the sovereignty over the archipelago being secured by it through the only lawful title which it professes and acknowledges as the only mode of transfer, becomes manifest.

What are the consequences of so harassing and unyielding a situation? The rupture of negotiations? The consequent renewal of hostilities?

Is there anyone who will not halt in the presence of such terrible consequences? Is there anyone who will entertain the idea that it is not better before submitting to them to resort to some other means that good faith cannot fail to suggest to the Contracting Parties?

And what is that means?

Both Commissions might very well agree to leave the question relating to the sovereignty over the Philippine Islands out of their own negotiations and reserve it for direct negotiations to be opened between the two Governments, and continue in the meanwhile their discussion of all the other points embodied in the treaty of peace. This method, which at first sight appears so simple, is nevertheless fraught with serious dangers, and signally those which might exist now were the negotiations broken off, with the only advantage of putting the dangers off for a short while. Should the two High Parties fail to agree, the situation would be the same as that which now confronts the Paris conference.

In the opinion of the Spanish Commission, there is another means more simple still and surer, which consists in an agreement by the two Commissions to propose to their Governments that an arbitrator or an arbitration tribunal, constituted in the manner by them agreed upon, shall determine the true sense in which Articles III and VI of the Protocol of Washington should be taken.

The difference of opinion between the two Commissions lies principally in the different sense each gives to those articles.

This appears from their respective memoranda.

Now, it seems that if ever in international conflicts there is, or may be, anything which men of good will should endeavor to settle by force of justice, or even by the dictates of equity, instead of force of arms, it is that which consists in a difference of interpretation of an article of any treaty previously agreed upon, arising out of the attempt to put it into execution.

Sovereigns may, through a feeling of natural pride, refuse to submit to the judgment of a third that which affects their honor or even their amour-propre. They may not wish to entrust to such a judgment the existence or even the integrity of their states. But it is inconceivable that in the face of the modern and Christian world they should prefer covering the earth with corpses and deluging it with human blood, to submitting to it their own opinion, in matters so exposed to the fail-

bility of the mind of men, such as cannot fail to be the proper sense to be given to an article of a convention, concluded upon matters which are alien and foreign to the above sacred subjects.

The United States are among the peoples of the civilized world those which, to their glory, have taken the initiative and have shown the most decided interest in resorting to this means so humane, so rational, and so Christian, rather than to the bloody one of war, to settle controversies between nations.

As far back as 1835 the Senate of Massachusetts approved a measure presented by the American Peace Association urging the creation of an international court to settle amicably and finally all difficulties between countries.

In 1851 the Committee on Foreign Relations of Washington (sic) unanimously declared that it was desirable for the United States to insert in its treaties a clause whereby differences which could not be settled diplomatically should be submitted before the outbreak of hostilities to the judgment of arbitrators.

In 1858 the Senate approved the report of the Committee on Foreign Relations. In 1873 the Senate again, and in 1874 the two Houses, reaffirmed this humanitarian aspiration. And, finally, in 1888, not satisfied with having marked out their own line of conduct in so laudable a direction, both Houses agreed by Joint Resolution to request the President to use his influence from time to time to bind all governments maintaining diplomatic relations with the United States to submit all questions that might arise between them in the future to the judgment of arbitrators.

The Spanish Commissioners hope that the case which presents itself before the Paris Conference will not lead the United States to depart from such glorious precedents, and seek to settle the matter by the last means which although never lawful among rational and free beings is sadly inevitable, in preference to other means more humane, conducive to preserve unalterable peace among men.

True copy:

EMILIO DE OJEDA.

Protocol No. 15.

CONFERENCE.

Of November 21, 1898.

The session having been postponed, at the request of the American Commissioners, till Monday, the 21st of November, on that day there were present—
On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The President of the American Commission presented a reply to the memorandum presented by the Spanish Commissioners at the last session on the subject of the Philippines. In so doing, he called attention to the concluding part of the reply, and suggested that it be read. But, before it was read, he stated that he desired to say that the American Commissioners had carefully examined the very able argument of the Spanish Commissioners, but had felt obliged to adhere to their construction of the powers of the Joint Commission under the Protocol. **The Joint Commission had been in session for several weeks, and it was the opinion of the American Commissioners that a conclusion should be reached. They had consulted their Government and had decided to make concessions, which were embodied in the concluding part of their reply, which was intended to bring the discussion to a close.**

The concluding part of the reply of the American Commissioners was then read by their Interpreter to the Spanish Commissioners.

The President of the Spanish Commission, after the close of the reading, stated that if the memorandum of the American Commissioners contained nothing more than what had just been read, he could give an immediate answer; but, as it was necessary to translate and to become acquainted with the preceding part, some time would

Protocolo No. 15.

CONFERENCIA.

Del 21 de Noviembre de 1898.

Habiéndose aplazado la sesion a peticion de los Comisarios americanos hasta el lunes 21 del corriente a las 2 p. m., se hallaron endichos dia y hora

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

El Presidente de la Comision americana presento una contestacion al Memorandum presentado por los Comisarios espanoles en la ultima sesion relativo a las Filipinas. Al hacerlo asi, llamo la atencion sobre la parte final de su contestacion y manifesto su deseo de que se diera lectura de ella. Pero antes de que fuese leida, dijo que deseaba hacer constar que los Comisarios americanos habian considerado atentamente los argumentos habilisimos de los Comisarios espanoles; pero que se velan obligados a adherirse a su interpretacion de las facultades de la Comision en pleno, segun los terminos del Protocolo. Dicha Comision habia prolongado sus labores durante varias semanas, y en vista de esto los Comisarios americanos opinaban que debia llegarse a un resultado final. Habian consultado a su Gobierno y decidido hacer las concesiones que estaban consignadas al final de su contestacion y cuyo objeto era el de terminar de una vez la discusion.

La ultima parte de dicha contestacion fue vertida verbalmente al castellano por el Interprete de la Comision americana.

El Presidente de la Comision espanola manifiesta que si el Memorandum de los Comisarios americanos no contuviese otra cosa que lo que acababa de leerse podria dar una contestacion inmediata; pero que como habia que traducir y enterarse de lo que precedia a su parte ultima se necesitaria algun tiempo para dar una respuesta:

be needed in which to prepare a reply. He then proposed that the Commissioners meet on Wednesday, the 23d instant, unless something should arise to require a postponement.

The American Commissioners concurring, it was agreed to adjourn the conference to the 23d of November, at 2 o'clock p. m., without prejudice to the right of the Spanish Commissioners to ask for a postponement.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WILLIAM P. FRYE.
GEORGE GRAY.
WHITELAW REID.
JOHN B. MOORE.

Propuso en seguida que las Comisiones se reuniesen el miercoles 23 a menos que surja algun incidente que exija un aplazamiento.

Asienten los Comisarios americanos y se acuerda que se aplaze la sesion hasta el miercoles 23 de Noviembre a las 2 p. m., sin perjuicio del derecho de aplazarla que asiste a los Comisarios espanoles.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

**REPLY OF THE AMERICAN COMMISSIONERS
TO THE MEMORANDUM PRESENTED BY THE SPANISH COM-
MISSIONERS**

ON NOVEMBER 16, 1898.

The American Commissioners have examined the memorandum of the Spanish Commissioners with that deliberate care and attention which they have been accustomed to bestow upon all the representations which those Commissioners have been pleased to submit touching the questions before the conference.

They note, in the first place, that the Spanish Commissioners disclaim any intention by their paper of the 3d of November to withdraw their previous acceptance of the American articles on the subject of Cuba, Porto Rico and the other Spanish islands in the West Indies, and the Island of Guam in the Ladrões.

This disclaimer, in spite of the form in which it is expressed, the American Commissioners would be content simply to accept without comment, were it not for the fact that it is accompanied with certain observations on the so-called Cuban debt that impose upon them the necessity of recurring to what they have previously said on that subject.

In citing the Royal Decrees of 1886 and 1890, and the contents of the bonds issued thereunder, as something with which the American Commissioners were previously unacquainted, the Spanish Commissioners seem to have overlooked or forgotten the paper which the American Commissioners presented on the 14th of October. In that paper the American Commissioners expressly mentioned and described the financial measures of 1886 and 1890 and the stipulations of the bonds thereby authorized. But they did more than this. Being concerned with the substance rather than with the form of the matter, they reviewed with some minuteness the history of the debt and the circumstances of its creation. They showed that it was in reality contracted by the Spanish Government for national purposes; that its foundations were laid more than twenty years before the Royal Decree of 1886, and at a time when the revenues of the island were actually producing a surplus, in national enterprises in Mexico and San Domingo, foreign to the interests of Cuba; and that it was soon afterwards swollen to enormous dimensions as the result of the imposition upon Cuba, as a kind of penalty, of the national expenses incurred in the efforts to suppress by force of arms the ten years' war for the independence of the island. At this point the American Commissioners in their paper of the 14th of October referred to the financial operation of 1886, but they properly referred to it in its true character of a national act for the consolidation or funding of debts previously incurred by the Spanish Government, and expressly quoted the national guaranty that appears on the face of the bonds. At the risk of a repetition which should be unnecessary, the American Commissioners will quote from their paper of the 14th of October the following paragraph:

"Subsequently the Spanish Government undertook to consolidate these debts (i. e., the debts incurred in Mexico, San Domingo, and the ten years' war) and to this end created in 1886 the so-called Billetes hipotecarios de la Isla de Cuba, to the amount of 620,000,000 pesetas, or \$124,000,000. The Spanish Government undertook to pay these bonds and the interest thereon out of the revenues of Cuba, but the national character of the debt was shown by the fact that, upon the face of the bonds, 'the Spanish Nation' (la Nación española) guaranteed their payment. The annual charge for interest and sinking fund on account of this debt amounted to the sum of 39,191,000 pesetas, or \$7,838,200, which was disbursed through a Spanish financial institution, called the Banco Hispano-Colonial, which is said to have collected daily from the custom house at Havana, through an agency there established, the sum of \$33,333."

The American Commissioners then referred in the same paper to the authorization by the Spanish Government in 1890 of a new issue of bonds, apparently with a view to refund the prior debt as well as to cover any new debts contracted between 1886 and 1890, and stated that, after renewal of the struggle for independence in February, 1895, this issue was diverted from its original purpose to that of raising funds for the suppression of the insurrection.

The American Commissioners are at a loss to perceive how, in reciting these transactions, in which past and not future obligations were dealt with, they could have been understood to intimate that Spain, through what is described in the Spanish memorandum as a "supernatural gift of divination," foresaw the insurrec-

tion of 1895 and the ultimate intervention of the United States. The American Commissioners will not indulge in the ready retort which this fanciful effort at sarcasm invites. Whether the consequences of imposing upon Cuba burdens not to be borne were or were not foreseen by Spain is a question upon which it would be idle now to speculate.

As to the special "Cuban War Emergency Loan," composed of "five per cent peseta bonds," which were referred to as part of what was considered in Spain as properly constituting the Cuban debt, the American Commissioners expressly declared that it did not appear that in these bonds the revenues of Cuba were mentioned.

The American Commissioners, in reviewing in their paper of the 14th of October the history of the so-called Cuban debt, necessarily invited the fullest examination of their statements. They have yet to learn that those statements contained any error.

They freely admit, however, that they had never seen it asserted, till they read the assertion in the Spanish memorandum, that the deficiencies in the Cuban appropriation bills or budgets which the debts are said to represent were "due to the great reductions of taxes made in Cuba by the mother country. If, as they are now assured, this is a fact "well known," they are compelled to admit that they were, and that they still remain, ignorant of it. Indeed, the American Commissioners were not aware that Cuban appropriation bills or budgets existed prior to 1890, in May of which year the first measure of the kind was submitted to the Spanish Cortes. During the discussion of that budget, a distinguished Senator, not a Cuban, who had been Minister of State in the Spanish Cabinet, Senor Don Servando Ruiz Gomez, presented to the Senate an official statement of the Colonial Department, showing that the alleged debts of Cuba amounted to \$126,834,419.25 in gold and \$45,300,076 in paper, or, in round numbers, \$140,000,000 in gold.

It is true that after 1890, and especially after 1896, deficiencies appeared in the budgets, but a correct conception of their cause may be derived from the budget of 1896-1897, when the prior debts were consolidated. The amount of the burdens imposed upon Cuba by that budget, eight years, as the Spanish memorandum observes, "after the establishment of peace," was \$25,959,734.79, which was distributed as follows:

General obligations.....	\$10,853,836.79
Department of Justice.....	863,022.22
Department of War.....	6,730,977.17
Department of the Treasury.....	903,326.29
Department of the Navy.....	1,434,211.40
Department of the Interior.....	3,935,658.92
Department of Fomento.....	1,238,702.00

\$25,959,734.79

Of the sum total of this burden, it is seen that the three items of General Obligations, War, and Navy, constitute nearly three-fourths. And what were the "General Obligations?" The principal item—nine-tenths of the whole—was that of \$9,647,423.02, for interest, sinking fund, and incidental expenses, on the so-called Cuban debt. The rest went chiefly for pensions to Spanish officials.

The budget for 1896-1897 amounted to \$28,583,432.23.

These figures, which speak for themselves, seem to render peculiarly infelicitous the novel suggestion that the deficiencies in the Cuban budgets have been due to the reduction of taxes.

As to that part of the Spanish memorandum in which the so-called Cuban bonds are treated as "mortgage bonds," and the rights of the holders as "mortgage rights," it is necessary to say only that the legal difference between the pledge of revenues yet to be derived from taxation and a mortgage of property cannot be confused by calling the two things by the same name. In this, as in another instance, the American Commissioners are able to refer to previous statements which, although the Spanish memorandum betrays no recollection of them, for obvious reasons remain unchallenged. The American Commissioners have shown, in their argument of the 27th of October, that the Spanish Government itself has not considered its pledge of the revenues of Cuba as in any proper legal sense a mortgage, but as a matter entirely within its control. In proof of this fact the American Commissioners quoted in that agreement certain provisions of the decree of autonomy for Cuba and Porto Rico, signed by the Queen Regent of Spain on the 25th of November, 1897, and countersigned by Senor Sagasta, as President of the Council of Ministers. By that decree it was declared that the manner of meeting the expenditures occasioned by the debt which burdened "the Cuban and Spanish treasury" should "form the subject of a law" wherein should be "determined the part payable by each of the treasuries, and the special means of paying the interest thereon, and of the amortization thereof, and, if necessary, of paying the principal;" that, when the "apportionment" should have been "made by the Cortes," each of

the treasuries should "make payment of the part assigned to it," and, finally, that "engagements contracted with creditors under the pledge of the good faith of the Spanish nation shall in all cases be scrupulously respected."

In these declarations the American Commissioners find, as they stated in the argument above referred to, "a clear assertion not only of the power of the Government of Spain to deal with the so-called Cuban debt as a national debt, but also a clear admission that the pledges of the revenues of Cuba were wholly within the control of that Government, and could be modified or withdrawn by it at will without affecting the obligation of the debt," and, so long as the stipulated payments upon the debt were made, without violating the engagements of Spain with her creditors.

No more in the opinion of the Spanish Government, therefore, than in point of law, can it be maintained that the Government's promise to devote to the payment of a certain part of the national debt revenues yet to be raised by taxation in Cuba, constituted in any legal sense a mortgage. The so-called pledge of those revenues constituted, in fact and in law, a pledge of the good faith and ability of Spain to pay to a certain class of her creditors a certain part of her future revenues. They obtained no other security, beyond the guarantee of the "Spanish Nation," which was in reality the only thing that gave substance or value to the pledge, or to which they could resort for its performance.

One more remark, and the American Commissioners have done with the renewed discussion into which they regret to have been obliged to enter on the subject of the so-called Cuban debt. The Spanish Commissioners are correct in saying that the Government of the United States repeatedly urged Spain to re-establish peace in Cuba, and did not exclude the use of arms for that purpose; but the impression conveyed by this partial statement of facts is altogether erroneous, as is also the implied representation that Spain's course in the matter may be considered as a compliance with the demands of the United States. The Government of the United States did indeed repeatedly demand that order be re-established in Cuba; but through long years of patient waiting it also tried and exhausted all the efforts of diplomacy to induce Spain to end the war by granting to the island either independence or a substantial measure of self-government. As early as the Spring of 1868, not long after the deepening gloom of the ten years' war began to settle upon the island, the United States offered its mediation and its credit for the re-establishment of peace between Spain and her colony. Spain then as afterwards preferred war to the relinquishment of her rule, and the United States did not assume to discuss the legitimacy of the expenses incurred in the pursuit of that policy. But the question of Spain's right to incur those expenses, and that of her right or her power to fasten them as a perpetual burden upon the revenues of Cuba, after those revenues have passed beyond her control, are questions between which the American Commissioners feel neither difficulty nor hesitation in declaring and maintaining a fundamental difference both in law and in morals.

The American Commissioners, before passing to the principal subject before the conference, will briefly notice that part of the Spanish memorandum which treats of the occupation of Manila by the American forces.

With the elaborate references to the apparent implication in a previous paper that General Merritt and Admiral Dewey might have knowingly violated the armistice in their capture of Manila a few hours after its signature, and with the new remarks about Admiral Dewey's draconian order, the spontaneity of his kind feelings, and other and similar phrases, we do not occupy ourselves; nor with the objections to our use of the word "fled" in describing the escape of the Spanish General before the surrender. We are entirely content on these points with the record. For the same reason we pass without comment the remark concerning the claim for indemnity "on similar grounds" in the Philippines that "on first sight this argument is not wanting in force; but the American Commissioners know perfectly well that this is only apparent, and that what did occur prove absolutely the contrary." We interpret this apparent charge of intentional deceit in the light of the valued assurance given in another part of the same paper by the Spanish Commissioners when they, themselves, admit that "no language or even a phrase improper to a diplomatic discussion has been used by them" and "they avoid with the greatest care the use of any phrase which might be personally unpleasant."

With regard to what is stated in the Spanish memorandum as to the occupation of territory as a guaranty in time of peace, and the limitations that are usually affixed to such occupation, the American Commissioners have only to advert to the fact that, as has often been observed by the Spanish Government in its communications, the state of war between the United States and Spain is not yet ended. In its original demands, just as in the Protocol of August 12, the United States declared that it would "occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace." These words imported a military occupation, with all its usual incidents, political and administrative, during the continuance of the state of war.

The distinction between the occupation of territory as a guaranty in time of peace, and the military occupation of the enemy's territory in time of war, is well illustrated in the case of France and Germany in 1871, which the Spanish memorandum, unfortunately for its purpose, cites in support of its contention as to the nature of the American occupation of Manila under the Protocol. By a convention concluded on January 28, 1871, France and Germany agreed to a general armistice, which took effect immediately in Paris and three days later in the departments. Under this convention the belligerent armies were to preserve their respective positions, which were separated by a definite line of demarcation, and, simply in recognition of the nature of the occupation, each of the armies reserved the right "to maintain its authority in the territory that it occupies, and to employ such means as may be considered necessary for the purpose by its commanders." By a subsequent convention of February 15, 1871, the fortified town of Belfort, which was besieged by the Germans, but had not been taken when the armistice was made, was brought within the German lines of occupation. On February 26, 1871, the belligerent powers concluded a preliminary treaty of peace. By this treaty, which, unlike the convention for an armistice, required the formal ratification of the two governments, the sovereignty of France over Alsace-Lorraine was renounced, and provision made for the payment to Germany besides of a war indemnity. By an additional convention signed on the same day it was agreed that the German troops should "refrain for the future from raising contributions in money in the occupied territories," but, on the other hand, it was declared that the German authorities should "continue to collect the state taxes" therein. And it was provided by the preliminary treaty that not until the conclusion and ratification of the definite treaty of peace should "the administration of the departments" remaining "in German occupation" be "restored to the French authorities."

"The United States will occupy and hold," so reads the Protocol, "the city, bay and harbor of Manila, pending the conclusion of a treaty of peace." These brief words obviously and necessarily imported the military occupation, in time of war, though not of active hostilities, of a designated territory, with the usual incidents of such occupation, and not an occupation as a guarantee in time of peace. From the incidents of one kind of occupation nothing is to be inferred as to the incidents of the other, for the simple reason that the two things are different in their nature. The occupation by a belligerent army of a hostile territory is conceded to involve the exercise of a paramount power of control which would be utterly inconsistent with the rights of the titular sovereign over his territory and its inhabitants in time of peace.

The American Commissioners have examined with special care that part of the Spanish memorandum which deals with the "control, disposition and government of the Philippines," and to the consideration of that subject they will now address themselves.

The American Commissioners are obliged at the outset to call attention to the fact that the present argument of the Spanish Commissioners contains the same defects as the previous one, in being directed against a position which the American Commissioners not only have never assumed, but which they expressly repudiate. The American Commissioners now repeat that their proposal for the cession of the Philippines is neither based nor alleged to be based upon a specific cession of Spanish sovereignty in the Protocol, but upon the right secured to the United States by that instrument to make in the negotiations for peace such demands on the subject as it should then deem appropriate under the circumstances. The only obligation therefore now resting upon the American Commissioners is to show not that their proposals in regard to the Philippines are founded on the Protocol, in the same sense as their demands in the case of Cuba, Porto Rico, and Guam, but that those proposals are embraced within the right thereby expressly secured to the United States to make demands in the future.

In the light of this plain and simple proposition, which is sustained not only by the Protocol itself, but by every document referred to or quoted in the present discussion, how idle and unavailing is the characterization of the present demands of the United States as "tardy," as well as the insinuation that that Government in postponing, with the express concurrence of Spain, the formulation of its demands, was guilty of a want of "frankness!"

The American Commissioners are gratified to find in the passages quoted in the Spanish memorandum from Mr. Cambon's reports of his conferences with the President, the amplest confirmation of their position. Those reports, as quoted by the Spanish Commissioners, show that the Spanish Government, far from asking, in any proper sense of the word, "explanations" of the phrase "control, disposition and government," fully understood its meaning, and sought but failed to obtain a limitation of it. Indeed, there is not to be found from first to last a suggestion that if the words "control, disposition and government" were allowed to stand they did not embrace the amplest right to deal with Spanish sovereignty in the islands.

In this relation it is the duty of the American Commissioners to notice the fact

that the Spanish memorandum, in comparing the reports of Mr. Cambon with those quoted by the American Commissioners, intimates that the former are entitled to preference because they were contemporaneous. But the record quoted by the American Commissioners was also contemporaneous, and was made by the Secretary of State under the supervision of the President himself. With this observation, the American Commissioners will pursue their argument.

In his report of the conversation of the 30th of July, Mr. Cambon is quoted as stating that "the President of the Republic was firm in not changing the terms of Article III.," but that, as the result of an appeal to his generosity, he consented to substitute the word "disposition" for "possession."

"The American Commissioners have already stated that the President refused to change the word "possession" except for a word of equally extensive meaning, and that the reason for which Mr. Cambon was understood to desire the change was that the word "possession" would, when translated into Spanish, seem to be of a severe and threatening nature. The meaning of Mr. Cambon, as defined in his report to the Spanish Government, was that the word "disposition" did not "pre-judge" the result of the negotiations, and that it had not so "comprehensive" a meaning as the word "possession."

The American Commissioners are unable to concur in Mr. Cambon's estimate of the relative comprehensiveness of these two English words; but they are obliged to point out, as a matter more material to the present discussion, that he does not, as the Spanish Commissioners affirm, allege that he "accepted the change because he understood that all question about the sovereignty of Spain over the Philippine Islands was thereby eliminated." On the contrary, his only claim is that the word "disposition" did not "pre-judge" the "result" of the "negotiation." His understanding therefore appears to have been precisely the opposite of that ascribed to him in the Spanish memorandum.

That this is the case is confirmed beyond all peradventure by the unsuccessful efforts subsequently made by Mr. Cambon, under instruction of the Government at Madrid, to obtain a limitation of the American demand, as it then and has ever since stood, that the treaty of peace should determine "the control, disposition and government of the Philippines."

The telegram of the Spanish Government to Mr. Cambon, in relation to this demand has now for the first time been disclosed to representatives of the Government of the United States. What other instructions Mr. Cambon may then have had in his possession, it is not material to conjecture. But, according to his own report, as quoted in the Spanish memorandum, he requested the President, in the interview of the 3d of August, "to have the kindness to state as precisely as possible his intentions in regard to the Philippine Islands. On this point," continues Mr. Cambon, "I told him 'the answer of the Federal Government is couched in terms that may lend themselves to all claims on the part of the United States, and consequently to all apprehensions of Spain in regard to her sovereignty.'"

Here is a clear declaration of Mr. Cambon that the phrase "control, disposition and government," admitted of "all claims" on the part of the United States, and that it created apprehensions on the part of Spain in regard to her "sovereignty;" and he asked, not for an "explanation" of the phrase, but for a statement by the President, as "precisely as possible," of his "intentions." In other words, Mr. Cambon, acting under the instructions of the Spanish Government, endeavored to obtain at that time a statement of the demands which the United States would make in regard to the sovereignty of Spain, and thereby at least an implied limitation of the rights in that regard. The reply of the President, as reported by Mr. Cambon, shows that he was firm in his determination both to retain the precise words of the demand and the full liberty of action which they secured. On this subject the President, as reported by Mr. Cambon, declared that he did not want "any misunderstanding to remain;" nothing was decided as against either Government; the negotiators of the treaty of peace must determine the matter.

This is from first to last the sum and substance of Mr. Cambon's reports, as quoted in the Spanish memorandum. The recurrence in that memorandum to Mr. Cambon's apparently casual use of the words "permanent advantages," as an evidence that sovereignty was not in question, when he himself declares that the words "control, disposition and government" lent themselves to "all claims" and therefore raised apprehension as to Spain's "sovereignty," discloses the infirmity of the contention in which the argument is employed. Indeed, the words "permanent advantages" are not in the context of Mr. Cambon invested with the importance which the Spanish memorandum now ascribes to them. As the American Commissioners pointed out on a previous occasion, it is not pretended that Mr. Cambon attempted to report the original words of the President, who spoke in English; and, immediately after attributing to the President words which he translates by the terms "permanent advantages," Mr. Cambon narrates the President's undoubted declaration that the "control, disposition and government" of the Philippines must be determined in the treaty of peace, in advance of which the case was not to be considered as decided against either Government.

In his report of the interview of the 9th of August, Mr. Cambon, as quoted in the Spanish memorandum, states that, when the note of the Spanish Government of the 7th of that month, in reply to the American demands, was read, the President and the Secretary of State were visibly displeased, and that, after a long silence the President objected to that part of the reply which related to the evacuation of Cuba and Porto Rico. The Spanish memorandum declares that neither the President nor the Secretary of State advanced any other reason than this for their displeasure, and that, "according to Mr. Cambon, these gentlemen said nothing during the conversation respecting the said reservation made by Spain of her sovereignty over the archipelago." As no direct assertion to this effect by Mr. Cambon is quoted, the American Commissioners are obliged to assume that he made none, and that the statement in the Spanish memorandum is a mere inference from an omission to report what was said on the subject of the Philippines. This omission may be accounted for by the fact that Mr. Cambon, although he had previously declared that the American demand admitted of "all claims" on the part of the United States, expressed and maintained the opinion that the Spanish reply fully accepted it, and therefore left nothing in that regard to be conceded, while in respect of the demand for the evacuation of Cuba and Porto Rico, which was to be immediate, the reservation by Spain of the approval of the Cortes, which was not then in session, presented an obstacle to an agreement. This objection he deemed it necessary to report, since it required, in his own opinion, a modification of Spain's reply to the American demands. But whatever may have been the cause of the omission, it is a fact that no small part of the "visible displeasure" of the President and the Secretary of State arose from the apparent design, upon which comment was duly made, in some way to limit the scope of the demand in regard to the Philippines—a design then as ever afterwards frustrated. In the opinion of the American Commissioners the note in question was far from "explicit;" nor can it be maintained that the President, while hearing that note with "visible displeasure" and adhering with "real stubbornness" to the phrase "control, disposition and government," because it "prejudged" nothing, at the same time accepted the words of limitation.

But what does Mr. Cambon say as to the introduction of the subject of the Protocol, which had not previously been suggested? After further conversation the President, as reported by Mr. Cambon, said: "There might be a means of putting an end to all misunderstanding; we might draw up a projet, which shall reproduce the conditions proposed to Spain in the same terms in which I have already framed them, and which shall establish the terms within which there shall be named on the one hand the Plenipotentiaries charged with negotiating the treaty of peace in Paris, and on the other hand the special Commissioners entrusted with the determination of the details of the evacuation of Cuba and Porto Rico."

The American Commissioners are unable to perceive the "immense difference" between this version of the President's words and that given in their own paper. The President suggests a means for putting an end, not to any particular misunderstanding, but to "all misunderstanding." And how does he propose to do this? By drawing up a Protocol, which "shall reproduce the conditions proposed to Spain," not with qualifications, reservations, or explanations, but "in the same terms in which I have already framed them." There was not, nor could there be, any misapprehension as to the meaning and effect of these words, nor was any betrayed in the telegram, heretofore quoted by the American Commissioners, in which Mr. Cambon advised the Spanish Government that the Government of the United States had "decided to state precisely (preciser), in a Protocol, the bases upon which peace negotiations must, in its judgment, be entered upon."

With this telegram Mr. Cambon communicated the text of the Protocol; and if his telegraphic summary of the note of the Secretary of State of the 10th of August was, as the Spanish Commissioners admit, inaccurate, it is equally true that his previous telegram conveyed with no uncertainty the purpose of the United States in requiring the adoption of a Protocol.

If the fact were less clear than it is, that the refusal of the President to accept the Spanish reply of the 7th of August as in any respect a satisfactory answer to the demands of the United States, gave rise to the Protocol, the American Commissioners would deem it proper to examine in detail the references to that note in the Spanish memorandum. But they will, under the circumstances, merely advert to the statement that Spain in the paragraph relating to the Philippines explicitly "reserved" her sovereignty over the archipelago, the implication being that she expressly withdrew it from the sphere of negotiation. The language of the note is, however, that "the Spanish Government must declare that, while accepting the third condition, they do not a priori renounce the sovereignty over the archipelago." This language, instead of withdrawing the sovereignty from discussion, implies that it may, as the result of the negotiations, be necessary to renounce it. The American contention, however, does not require further analysis of the note of August 7 than has been given in this and the preceding memoranda of the

American Commissioners. It was rejected by the President, and the final agreement of the parties reduced to the clear and unequivocal terms of the Protocol.

The Spanish Commissioners endeavor to argue that there could have been no intention to include in the powers of this Joint Commission the question of the sovereignty of the Philippines, because the Secretary of State of the United States, in his note of the 30th of July last, after stating the demands of his Government, added: "If the terms hereby offered are accepted in their entirety, Commissioners will be named by the United States to meet similarly authorized Commissioners on the part of Spain for the purpose of settling the details of the treaty of peace and signing and delivering it under the terms above indicated." Is the "unexpressed demand" of the United States, inquire the Spanish Commissioners, for the cession of an immense territory, understood by the American Commissioners to be a detail of the treaty of peace?

The American Commissioners have no difficulty in replying that they do so understand it, but not in the sense which the question implies. It is evident that the Spanish memorandum seeks to construe the language of the Secretary of State as if he had used in connection with the word "details" the word "unimportant," and actually proposed to refer to the Commissioners the settlement of only "unimportant details." It should seem unnecessary to say, however, that in speaking of "details" he merely referred to the particulars of the treaty as considered separately and in relation to the whole. It can hardly be supposed that if the two Governments had intended that the negotiations of the treaty of peace should be occupied with details of little importance, they would each have sent five commissioners to a neutral capital for the purpose of arranging them.

But it is argued by the Spanish Commissioners that the words "control, disposition and government," even taken by themselves, do not comprehend the subject of sovereignty, but merely that of governmental "reforms." To the American Commissioners such an interpretation is incomprehensible. If nothing but "reforms" had been intended, it could never have occurred to either party to employ for that purpose three words none of which expressed its meaning, while each of them contained a broader one. On the other hand, the use of the word "sovereignty" in conjunction with the words actually employed was unnecessary, while, if used alone, it would have defeated the very object of postponing the whole subject of the Philippines for future determination. "Control, disposition and government" included everything. "Sovereignty" would have excluded everything but itself, and have left to future determination merely the question of its own existence, supreme and unconditional. In the event of the United States desiring to take only a part of the archipelago, such a limitation of the scope of the negotiations would have been injurious to both parties.

The Spanish Commissioners, however, have sought to restrict the meaning of the words "control, disposition and government," by an appeal to the French text, into which the original English was translated; and as the French word "contrôle," by which "control" was translated, bears a significance less extensive than the latter, they seem to contend that all the other words, both in the English and in the French text, should be reduced to harmony with it.

To the American Commissioners, this argument appears to involve the elimination of the entire English text and of the greater part of the French. It first strikes out, as at least superfluous, the English words "disposition and government," and the French words "disposition et gouvernement," and then limits the meaning of the English "control" to that of the French "contrôle." It thus virtually reduces the stipulation to the single French word last mentioned. By no principle of construction can this process be defended.

The American Commissioners are therefore, for the reasons which they have stated, compelled to maintain that by the plain and comprehensive terms of the Protocol, as construed in their normal sense and in the light of all the circumstances of its adoption, the future of the Philippines was left, in the fullest measure, to the determination of this Joint Commission.

This conclusion renders it necessary to answer the proposals of the Spanish Commissioners for the resignation by this Commission of its peacemaking functions under the Protocol of the 12th of August, and the transfer to other persons of the duty of determining the question now particularly before it.

The Spanish Commissioners propose that the Joint Commission, shall, instead of disposing of the question of the Philippines, adopt one of the following courses:

I. Remit that question to the two Governments, for adjustment, if possible, by direct negotiation; or

II. Advise those Governments to submit it to an arbitration, in which the true sense of Articles III. and VI. shall be determined.

To the first of these proposals it is sufficient to reply that both Governments have by the solemn engagement of the Protocol committed to their direct representatives here assembled the duty of concluding a definitive treaty of peace which shall

determine the destiny of the archipelago. That these representatives shall, after weeks of patient investigation and interchange of views in oral discussion and written argument, surrender their task unaccomplished to other representatives of the same Governments, is a suggestion which cannot be seriously entertained. Indeed, the memorandum of the Spanish Commissioners frankly admits that in the event of a new disagreement the situation would be the same as that which now confronts the Paris conference.

It is equally futile now to invite arbitration as to the meaning of terms plainly expressed in the Protocol. "To avoid misunderstanding," as the United States declared in its note of the 10th of August, the precise agreement of the two Governments was put into a concise and simple form. Shall it be said that this Joint Commission is incapable of interpreting the very compact under which it has assembled? The principle of international arbitration can have no application to such a case. To avoid war no government, it is believed, will do or suffer more than the one which the American Commissioners have the honor to represent in this conference. Unfortunately no way for arbitration was opened before the actual conflict began. Arbitration, as we have had occasion heretofore to observe, precedes war, to avoid its horrors; it does not come after the trial by battle to enable either party to escape its consequences.

The American Commissioners, feeling that this body must accept the responsibility of reaching conclusions, must decline to ask the assistance of an arbitrator. It is true that the very constitution of a joint commission like the present presupposes a possible irreconcilable difference of opinion of representatives of one nation opposed to others of equal number and authority. In such an event, nothing remains but for one of the contesting parties to yield its opinions in order that a peaceful solution may be reached. In the present case the American Commissioners have determined to make concessions to the extent embodied in the proposals which will conclude this memorandum.

The United States is accused by the Spanish Commissioners of harsh and severe measures in dealing with a discomfited enemy. In the light of events which led to and characterized the war, no less than historical precedents which might be cited, this charge is found to be entirely groundless.

For half a century the attempts of the Cubans to overthrow the sovereignty of Spain over the island, within a hundred miles of the shores of the United States, have produced serious disturbances in that country, grave and constant interference with its commerce, and frequent danger of the rupture of friendly relations with Spain. How could the conditions existing in the island be otherwise than of vital concern to us? The Cubans were our neighbors, with whom our relations were necessarily intimate and extensive; and they had been engaged in a struggle for independence with stronger reasons than existed in our own case when we rebelled against the mother country. The revolution of 1895, like the prior attempts at independence, entailed upon us heavy burdens. It made it necessary to patrol our coasts, to tax both civil and military resources in order to detect and prevent expeditions from our shores in the interests of the insurgents, and to repress the natural sympathy of our citizens, while we remained passive witnesses of misery, bloodshed and starvation in a land of plenty almost within sight of our borders. At length came the destruction of the battleship *Maine* in the harbor of Havana, with the loss of 266 of her crew. While we may not attribute this catastrophe to the direct act of a Spanish official, it betrayed, in the opinion of the United States, such neglect or inability on the part of Spain to secure the safety of the ship of a friendly nation in the principal harbor of the island as to induce Congress to recite it as an outgrowth of conditions which required our intervention.

War ensued; and in less than four months nearly all the ports of Cuba were blockaded, Santiago was taken, the Spanish fleets in the West Indies and the Philippines destroyed, Porto Rico was about to surrender, Manila was on the point of capitulating, and all the colonies of Spain lay practically at the mercy of the United States. This recital is made, not in an unbecoming spirit of triumph, but because it exhibits the conditions that existed, and the advantages that the United States enjoyed, when, preferring peace to war, it agreed to the Protocol.

The Spanish Commissioners in their memorandum have in diplomatic words expressed their surprise at our want of magnanimity to a defeated country. How does the case appear in the light of what has been stated? We might have demanded from Spain indemnity in money for the cost of the war, which, even if no unforeseen contingencies occur, will have amounted to \$240,000,000, at the close of the present calendar year, to say nothing of further expenses which will be required under the laws of the United States existing at the outbreak of the war. We might have required compensation for our injuries and losses, national as well as individual, prior to the outbreak of the war. Yet we have asked for no money. From the relinquishment of Spanish sovereignty in Cuba we derive no compensation. Porto Rico, Guam and the Philippines will bring burdens as well as benefits, and, regarded

simply as indemnity, will be grossly inadequate to compensate the United States for the mere pecuniary cost of the war; and, yet, in spite of all this, for the sake of peace, we propose to make to Spain liberal concessions. Can we be justly charged with abuse of our opportunities, or with taking undue advantage of the misfortunes of an adversary? The American Commissioners can perceive no ground for such a charge. On the contrary, they think that the Spanish Commissioners should accept our terms at once, and restore peace between the two countries.

Even if the United States were disposed to permit Spanish sovereignty to remain over the Philippines, and to leave to Spain the restoration of peace and order in the islands, could it now in honor do so? The Spanish Commissioners have, themselves, in an earlier stage of these negotiations, spoken of the Filipinos as our allies. This is not a relation which the Government of the United States intended to establish; but it must at least be admitted that the insurgent chiefs returned and resumed their activity with the consent of our military and naval commanders, who permitted them to arm with weapons which we had captured from the Spaniards, and assured them of fair treatment and justice. Should we be justified in now surrendering these people to the Government of Spain, even under a promise of amnesty, which we know they would not accept?

If, on the other hand, the United States should be content to retain Luzon alone, could anything but trouble be expected from the division of the group? Would not contrasts in government, in modes of administration, and in the burdens of taxation, in different islands lying so closely together, but largely inhabited by kindred peoples, produce discontent among the inhabitants? If the natives of the islands that remained under Spanish rule should, as doubtless would be the case, continue in insurrection, would not the natives of the American islands endeavor to help them, by fitting out hostile expeditions and furnishing arms and supplies? Would not complaints then be made by one Government against the other, leading to crimination and recrimination and probably in the end to another international war?

The situation that has arisen in the Philippines was neither foreseen nor desired by the United States, but, since it exists, that Government does not shirk the responsibilities growing out of it; and the American Commissioners now make to the Spanish Commissioners, in the light of those responsibilities, a final proposition.

The proposal presented by the American Commissioners in behalf of their Government for the cession of the Philippines to the United States having been rejected by the Spanish Commissioners, and the counter-proposal of the latter for the withdrawal of the American forces from the islands and the payment of an indemnity by the United States to Spain having been rejected by the American Commissioners, the American Commissioners, deeming it essential that the present negotiations, which have already been greatly protracted, should be brought to an early and definite conclusion, beg now to present a new proposition embodying the concessions which, for the sake of immediate peace, their Government is under the circumstances willing to tender.

The Government of the United States is unable to modify the proposals heretofore made for the cession of the entire archipelago of the Philippines, but the American Commissioners are authorized to offer to Spain, in case the cession should be agreed to, the sum of twenty million dollars (\$20,000,000) to be paid in accordance with the terms to be fixed in the treaty of peace.

And it being the policy of the United States to maintain in the Philippines an open door to the world's commerce, the American Commissioners are prepared to insert in the treaty now in contemplation a stipulation to the effect that, for a term of years, Spanish ships and merchandise shall be admitted into the ports of the Philippine Islands on the same terms as American ships and merchandise.

The American Commissioners are also authorized and prepared to insert in the treaty, in connection with the cessions of territory by Spain to the United States, a provision for the mutual relinquishment of all claims for indemnity, national and individual, of every kind, of the United States against Spain and of Spain against the United States, that may have arisen since the beginning of the late insurrection in Cuba and prior to the conclusion of a treaty of peace.

The American Commissioners may be permitted to express the hope that they may receive from the Spanish Commissioners, on or before Monday the 28th of the present month, a definite and final acceptance of the proposals herein made as to the Philippine Islands, and also of the demands as to Cuba, Porto Rico and other Spanish islands in the West Indies, and Guam, in the form in which those demands have been provisionally agreed to. In this event it will be possible for the Joint Commission to continue its sessions and to proceed to the consideration and adjustment of other matters, including those which, as subsidiary and incidental to the principal provisions, should form a part of the treaty of peace.

In particular the American Commissioners desire to treat of religious freedom in the Caroline Islands, as agreed to in 1896; of the release of prisoners now held by

Spain for political offences in connection with the insurrections in Cuba and the Philippines; the acquisition of the island variously known as Kusale, Ualan, or Strong Island, in the Carolines, for a naval and telegraph station, and of cable-landing rights at other places in Spanish jurisdiction; and the revival of certain treaties heretofore in force between the United States and Spain.

True copy:
JOHN B. MOORE

CONFERENCE

CONFERENCIA

November 28, 1898.

Del 28 de Noviembre de 1898.

The conference which was to have been held on the 23rd instant having been adjourned in consequence of the correspondence exchanged between the Presidents of the two Commissions, which is appended to the present protocol, in the shape of two letters of the President of the Spanish Commission and the answers thereto of the President of the American Commission, the Joint Commission met to-day at two o'clock p. m., when there were

Aplazada la conferencia que debio celebrarse el dia 23 del corriente a consecuencia de la correspondencia cambiada entre los Presidentes de ambas Comisiones, que va anexa al acta presente, en forma de dos cartas del Presidente de la Comision española y del las dos contestaciones a aquellas del Presidente de la Comision americana, se reunieron ambas Comisiones hoy a las 2 de la tarde hallandose

Present--

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding conference was read and approved.

The President of the Spanish Commission, in accordance with the agreement previously reached, presented to the American Commissioners a document containing the final answer of the Spanish Government to the proposition as to the Philippine Islands which the American Commissioners presented as final at the last session.

The language of the answer is as follows:

"The Spanish Commissioners hastened to lay before their Government the proposition which, as final, was presented to them at the last session by the American Commissioners, and they are now specially authorized to give within the time designated and under the conditions expressed the reply which was requested of them by the American memorandum.

"Examined solely in the light of the legal principles which have guided the action of the Spanish Commissioners during the course of these negotiations, the latter consider the American proposition in every way inadmissible for the reason repeatedly set forth in previous documents forming a part of the Protocol.

"Neither can they consider the said propositions as a satisfactory form of agreement and compromise between two oppos-

Presentes--

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

El Presidente de la Comision española, de conformidad con lo acordado anteriormente, presenta a los Comisarios americanos un documento que contiene la contestacion definitiva del Gobierno español a la proposicion sobre Filipinas, que con caracter de final presentaron en la ultima sesion los Comisarios americanos.

Los terminos de dicha contestacion son los siguientes:

"Los Comisarios españoles se apresuraron a poner en conocimiento de su Gobierno la proposicion, que con caracter de definitiva, les fue presentada en la sesion ultima por los Senores Comisarios americanos, y se hallan hoy explicitamente autorizados a dar la respuesta que dentro del plazo senalado y con las condiciones expresados en el Memorandum americano se les pedia.

"Examinada unicamente a la luz de los principios juridicos que ha venido inspirando la conducta de los Comisarios españoles durante el curso de estas negociaciones, encuentran estos de todo punto inadmissible la proposicion americana, por las razones repetidamente expuestas en anteriores documentos que forman parte de Protocolo.

"Tampoco pueden considerar dicha proposicion como satisfactoria formula de avenencia y transaccion entre opuestos

ing principles, since the terms which by way of concession are offered to Spain do not bear a proper proportion with the sovereignty which it is endeavored to compel us to relinquish in the Philippine Archipelago. Had they borne such proportion, Spain would have at once, for the sake of peace, made the sacrifice of accepting them. The American Commission knows that the Spanish Commission endeavored, although fruitlessly, to follow this course, going so far as to propose arbitration for the settlement of the principal questions.

"Spain then having on her part exhausted all diplomatic recourses in the defence of what she considers her rights and even for an equitable compromise, the Spanish Commissioners are now asked to accept the American proposition in its entirety and without further discussion, or to reject it, in which latter case, as the American Commission understands, the peace negotiations will end and the Protocol of Washington will, consequently, be broken. The Government of Her Majesty, moved by lofty reasons of patriotism and humanity, will not assume the responsibility of again bringing upon Spain all the horrors of war. In order to avoid them it resigns itself to the painful strait of submitting to the law of the victor, however harsh it may be, and as Spain lacks material means to defend the rights she believes are hers, having recorded them, she accepts the only terms the United States offers her for the concluding of the treaty of peace."

This answer was delivered to the American Commissioners and translated by their Interpreter into English.

The President of the Spanish Commission expressed the opinion that, the proposition of the American Commission having been accepted, it was in order for the Secretaries of the two Commissions to confer and agree upon the form in which the articles relating to Cuba, Porto Rico and the Philippine Islands should be drawn up, which articles they should afterwards submit to the Joint Commission for approval or modification.

The American Commissioners assented to his proposal, and suggested that the correspondence exchanged between the Presidents of the two Commissions in the interval between the last and the present session be appended either to this protocol or to the next.

The President of the Spanish Commission concurring in this suggestion, it was agreed that the two letters which he had addressed to the President of the American Commission and the answers thereto given by the latter be appended to the present protocol.

The President of the American Commission expressed the hope that a mutually satisfactory agreement might be reached as to all matters other than those disposed of by the acceptance of the American proposition, and, in order to hasten the conclusion of the treaty, he proposed that the American Commission should draw up arti-

principios, pues las condiciones que a titulo de concesion se ofrecen a Espana, no guardan ninguna proporcion con la soberania a que se nos quiere obligar a renunciar en el Archipelago Filipino. Si la hubieran guardado, hubiese hecho Espana desde luego el sacrificio de aceptarlas en aras del deseo de la paz. Consta a la Comision americana que la espanola intento, aunque sin exito, entrar en esta via, llegando hasta proponer el arbitraje para la resolucion de las cuestiones principales.

"Agotados, pues, por parte de Espana, todos los recursos diplomaticos para la defensa del que considera su derecho, y aun para una equitativa transaccion, se exige hoy a los Comisarios espanoles que acepten en conjunto y sin mas discusiones la proposicion americana, o que la rechacen, en cuyo caso, quedarian terminadas, segun entiende la Comision americana, las negociaciones para la paz y roto por consiguiente el Protocolo de Washington. El Gobierno de S. M. movido por altas razones de patriotismo y de humanidad no ha de incurrir en la responsabilidad de desatar de nuevo sobre Espana todos los horrores de la guerra. Para evitarlos se resigna al doloroso trance de someterse a la ley del vencedor, por dura que esta sea, y como carece Espana de medios materiales para defender el derecho que cree le asiste, una vez ya consiguado, acepta las unicas condiciones que los Estados Unidos le ofrecen para la conclusion del tratado de paz."

Es entregada dicha contestacion a los Comisarios americanos y vertida al ingles por su interprete.

El Presidente de la Comision espanola manifiesta que aceptada la proposicion de la Comision americana procederia en su sentir que los Secretarios de ambas Comisiones se pusieran de acuerdo para la redaccion de los articulos referentes a Cuba, Puerto Rico y Filipinas, que someterian luego a la Comision en pleno para que esta los aprobase o modificase.

Asiente a ello la Comision americana y su Presidente propone que la correspondencia cambiada entre los dos Presidentes en el intervalo entre la ultima y la presente sesion sean anexas a esta acta o a la proxima.

El Presidente de la Comision espanola es de la misma opinion, y se acuerda que las dos cartas que ha dirigido al Presidente de la Comision americana y las dos contestaciones de este sean anexas al acta presente.

El Presidente de la Comision americana manifiesta su esperanza de que pueda llegarse ahora a un acuerdo satisfactorio respecto de los demas puntos subsidiarios de su proposicion, aparte de los que han sido ya aceptados, y dice que con objeto de apresurar la conclusion del tratado, se propone redactar los demas articulos y

cies and present them at the next conference to be orally discussed, thus avoiding the presentation of memoranda which would delay the negotiations.

The President of the Spanish Commission answered that the form in which the American Commissioners should desire to proceed was left entirely to their choice and that he had nothing to suggest in this respect; and he also expressed the opinion that the presentation of memoranda would be unnecessary, except in some special case which might occur. He proposed that the meeting should be adjourned until the Secretaries should have drawn up the draft of articles previously mentioned by him.

The President of the American Commission concurred in this proposal and, being desirous also to present the articles referring to the subsidiary points of the treaty at the next session, he moved that that session should be held on Wednesday, the 30th instant, at two o'clock p. m.

The President of the Spanish Commission concurred in this proposal, and requested the American Commission to hasten as much as practicable their proceedings, so as to terminate at the earliest possible moment the labors of the Commission.

The session was accordingly adjourned till Wednesday, the 30th instant, at two o'clock p. m.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE,
GEO. GRAY.
WHITE LAW REID.
JOHN B. MOORE.

presentarlos en la proxima conferencia para ser discutidos oralmente, evitandose asi la presentacion de Memoranda que retrasaria las negociaciones.

El Presidente de la Comision espanola contesta que la forma en que deseen proceder los Comisarios americanos queda completamente a su eleccion, y que nada tiene por tanto que sugerir, al respecto, siendo asimismo de opinion que huelga la presentacion de Memoranda al respecto, salvo algun caso especial que pudiera ocurrir, y propone que se levante la sesion y se aplase la nueva reunion hasta que los Secretarios puedan redactar el proyecto de articulado.

El Presidente de la Comision americana hace asimismo esta reserva y deseando presentar el articulado referente a los puntos subsidiarios del tratado en la proxima sesion, propone que esta tenga lugar el miercoles 30 del presente a las 2.

El Presidente de la Comision espanola conviene en que asi sea y ruega a los Comisarios americanos que apresuren en lo posible sus procedimientos a fin de que terminen cuanto antes las tareas de la Comision.

En consecuencia queda aplazada la proxima sesion para el miercoles 30 del corriente a las 2 p. m.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-ARRUTIA.
RAFAEL CERRERO.
EMILIO DE OJEDA.

COMISION

Para la Negociacion de la Paz Con los Estados Unidos.

Sr. D. William R. Day.

Muy Senor mio.

A fin de que pueda esta Comision y en su caso el Gobierno de S. M. C. deliberar con pleno y exacto conocimiento de su sentido sobre la proposicion con que termina el Memorandum presentado en la sesion de ayer por la Comision que dignamente presidia, y que acaba de traducirse al espanol, me es necesario rogaros que, con la urgencia que os sea posible, os sirvais, si os parece conveniente, aclarar el concepto de los puntos siguientes de dicha proposicion, cuya inteligencia es para mi oscura y vaga:

PRIMERO. La proposicion que hacéis descansa sobre la base de que las colonias espanoles han de pasar libres de toda carga, quedando por consiguiente todas, absolutamente todas, las obligaciones y deudas coloniales pendientes, de cualquier clase que ellas sean y cualquiera que haya sido su origen y objeto, a cargo exclusivamente de Espana?

SEGUNDO. El ofrecimiento que los Estados Unidos hacen a Espana de establecer igualdad de condiciones durante cierto numero de años en los quertos del Archipiélago entre los buques y mercancías de ambas naciones, ofrecimiento que se hace preceder de la afirmación de que la política de los Estados Unidos es mantener en las Filipinas la puerta abierta al comercio del mundo debe entenderse en el sentido de que los buques y mercancías de las demás naciones han de gozar o poder gozar de la misma situación que por cierto tiempo se conceda a los de Espana, mientras los Estados Unidos no cambien dicha política?

TERCERO. Habiendo consignado el Sr. Secretario de Estado, en la nota de 30 de Julio último, que la cesion por Espana de la Isla de Puerto Rico y de otras islas actualmente bajo su soberanía en las Indias Occidentales, así como de una en las Ladroneas, era en compensación de las pérdidas y gastos hechos por los Estados Unidos, durante la guerra, y de los danos que sus ciudadanos habían sufrido durante la última insurrección de Cuba, cuales son las reclamaciones a que se refiere la proposición, al exigirse en ella que en el tratado se ha de insertar una disposición sobre el abandono mutuo de todas las reclamaciones individuales y nacionales surgidas desde el principio de la última insurrección en Cuba hasta la conclusión del tratado de paz?

CUARTO. Al decirse que en el tratado se ha de convenir sobre la libertad de los detenidos por Espana por delitos políticos relacionados con las insurrecciones de Cuba y Filipinas, se quiere dar a entender que a la vez no se ha de convenir sobre la libertad de los prisioneros espanoles que estan en poder de las fuerzas americanas y de sus auxiliares los insurrectos de Cuba y Filipinas?

QUINTO. También se ha de convenir en el tratado sobre la adquisición por los Estados Unidos del derecho de amarre de cables en otros sitios bajo la jurisdicción de Espana. En que region estan dichos sitios? Esta frase, comprende solamente los territorios de Espana en el Oriente o también en la Península?

SEXTO. Se dice asimismo que se renovaran ciertos tratados que hasta ahora estuvieron en vigor entre los Estados Unidos y Espana. Cuales son estos tratados?

Y finalmente, **SEPTIMO.** Dicen los Comisarios americanos que si los espanoles aceptan final y concretamente su proposición y las anteriores sobre Cuba, Puerto Rico y demás islas, será posible a la Comision en pleno continuar sus sesiones y proceder al estudio y arreglo de otros puntos, significan estas frases que si la Comision espanola no acepta final y concretamente dichas proposiciones, sin modificación sustancial, la Comision en pleno no continuara sus sesiones?

Os ruego y encarezco la resolución de estas dudas, si lo tenéis a bien, sobre la inteligencia de vuestra proposición, lo mas pronto que os sea posible, para que la Comision espanola pueda dar en sesion de la Comision en pleno la contestación que considere precedente.

Aceptad, Senor, os lo ruego, el testimonio de mi distinguida consideración.

Firmado: E. MONTERO RIOS.

Paris, 22 de Noviembre de 1898.

COMMISSION
FOR THE NEGOTIATION OF PEACE WITH THE UNITED STATES.

MR. WILLIAM R. DAY,

My Dear Sir:

In order that this Commission and, if necessary, the Government of H. C. M., may study with a full and exact knowledge the proposition which closes the memorandum presented at yesterday's session by the Commission you worthily head, the translation into Spanish of which has just been completed, it becomes necessary to beg you that with all possible haste you will be pleased to make clear the meaning of the following points of said proposition, which to me is obscure and vague:

FIRST. Is the proposition you make based on the Spanish colonies being transferred free of all burdens, all, absolutely all outstanding obligations and debts, of whatsoever kind and whatever may have been their origin and purpose, remaining thereby chargeable exclusively to Spain?

SECOND. Is the offer made by the United States to Spain to establish for a certain number of years similar conditions in the ports of the archipelago for vessels and merchandise of both nations, an offer which is preceded by the assertion that the policy of the United States is to maintain an open door to the world's commerce, to be taken in the sense that the vessels and goods of other nations are to enjoy or can enjoy the same privilege (situation) which for a certain time is granted those of Spain, while the United States do not change such policy?

THIRD. The Secretary of State having stated in his note of July 30 last that the cession by Spain of the Island of Porto Rico and the other islands now under Spanish sovereignty in the West Indies, as well as one of the Ladroneas, was to be as compensation for the losses and expenses of the United States during the war, and of the damages suffered by their citizens during the last insurrection in Cuba, what claims does the proposition refer to on requiring that there shall be inserted in the treaty a provision for the mutual relinquishment of all claims, individual and national, that have arisen from the beginning of the last insurrection in Cuba to the conclusion of the treaty of peace?

FOURTH. Upon stating that the treaty must contain an agreement as to the release of those held by Spain for political offences connected with the insurrections of Cuba and the Philippines, is it desired that it be taken as meaning that at the same time there is to be no agreement as to the release of the Spanish prisoners held in the possession of the American forces and their auxiliaries, the insurgents of Cuba and the Philippines?

FIFTH. In the treaty there is also to be an agreement as to the acquirement by the United States of cable landing privileges in other places under the jurisdiction of Spain. Where are such places? Does this sentence only include territories of Spain in the Orient, or in the Peninsula also?

SIXTH. It is also said that certain treaties which were in force between the United States and Spain up to this time will be revived. What are these treaties?

And, finally, SEVENTH. The American Commissioners say that if the Spanish Commissioners accept their proposition finally and definitely and the previous proposals as to Cuba, Porto Rico and other islands, it will be possible for the Joint Commission to continue its sessions and proceed to the examination and arrangement of other points. Do these words mean that if the Spanish Commission does not finally and definitely accept said propositions without substantial modifications, the Joint Commission will not continue its sessions?

I beg and earnestly request you to settle these doubts, should you be so disposed, as to the meaning of your proposition as soon as may be possible, in order that the Spanish Commission may, in a session of the Joint Commission, furnish the reply it may deem proper.

Accept, Sir, I pray you, the expression of my distinguished consideration.

Signed: E. MONTERO RIOS.

Paris, November 22, 1898.

Annex 2 to Protocol No. 16.

United States and Spanish Peace Commission.

United States Commissioners.

Paris.

November 22, 1898.

Senor Don E. Montero Rios,

My Dear Sir:

Having received and read your letter of to-day, touching the final proposition presented by the American Commissioners at yesterday's conference, I hasten to answer your inquiries seriatim, first stating your question, and then giving my reply.

"FIRST. Is the proposition you make based on the Spanish colonies being transferred free of all burdens, all, absolutely all outstanding obligations and debts, of whatsoever kind and whatever may have been their origin and purpose, remaining thereby chargeable exclusively to Spain?"

In reply to this question, it is proper to call attention to the fact that the American Commissioners, in their paper of yesterday, expressed the hope that they might receive within a certain time "a definite and final acceptance" of their proposal as to the Philippines, and also "of the demands as to Cuba, Porto Rico and other Spanish islands in the West Indies, and Guam, in the form in which those demands have been provisionally agreed to."

The form in which they have thus been agreed to is found in the proposal presented by the American Commissioners on the 17th of October and annexed to the protocol of the 6th conference, and is as follows:

"ARTICLE 1. Spain hereby relinquishes all claim of sovereignty over and title to Cuba.

"ARTICLE 2. Spain hereby cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also the Island of Guam in the Ladroneas."

These articles contain no provision for the assumption of debt by the United States.

In this relation, I desire to recall the statements in which the American Commissioners have in our conferences repeatedly declared that they would not accept any articles that required the United States to assume the so-called colonial debts of Spain.

To these statements I have nothing to add.

But, in respect of the Philippines, the American Commissioners, while including the cession of the archipelago in the article in which Spain "cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also the Island of Guam in the Ladroneas," or in an article expressed in similar words, will agree that their Government shall pay to Spain the sum of twenty million dollars (\$20,000,000).

"SECOND. Is the offer made by the United States to Spain to establish for a certain number of years similar conditions in the ports of the archipelago for vessels and merchandise of both nations, an offer which is preceded by the assertion that the policy of the United States is to maintain an open door to the world's commerce, to be taken in the sense that the vessels and goods of other nations are to enjoy or can enjoy the same privilege (situation) which for a certain time is granted those of Spain, while the United States do not change such policy?"

The declaration that the policy of the United States in the Philippines will be that of an open door to the world's commerce necessarily implies that the offer to place Spanish vessels and merchandise on the same footing as American is not intended to be exclusive. But the offer to give Spain that privilege for a term of years is intended to secure it to her for a certain period by special treaty stipulation, whatever might be at any time the general policy of the United States.

"THIRD. The Secretary of State having stated in his note of July 30 last that the cession by Spain of the Island of Porto Rico and the other islands now under Spanish sovereignty in the West Indies, as well as one of the Ladroneas, was to be as compensation for the losses and expenses of the United States during the war, and of the damages suffered by their citizens during the last insurrection in Cuba, what claims does the proposition refer to on requiring that there shall be inserted in the treaty a provision for the mutual relinquishment of all claims, individual and national, that have arisen from the beginning of the last insurrection in Cuba to the conclusion of the treaty of peace?"

While the idea doubtless was conveyed in the note of the Secretary of State of the United States of the 30th of July last that the cession of "Porto Rico and other

islands now under the sovereignty of Spain in the West Indies, and also the cession of an island in the Ladrões, to be selected by the United States," was required on grounds of indemnity, and that "on similar grounds the United States is entitled to occupy and will hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines," no definition has as yet been given of the extent or precise effect of the cessions in that regard. The American Commissioners therefore propose, in connection with the cessions of territory, "the mutual relinquishment of all claims for indemnity, national and individual, of every kind, of the United States against Spain and of Spain against the United States, that may have arisen since the beginning of the late insurrection in Cuba and prior to the conclusion of a treaty of peace."

And I may add that this offer is made by the American Commissioners in full view of the fact that the citizens of the United States, having claims that come within the foregoing relinquishment, will, on the strength thereof, apply to their own Government for indemnity.

As to the fourth, fifth and sixth questions contained in your letter, permit me to point out that they do not relate to matters concerning which the American Commissioners stated that the acceptance of our proposals within the time mentioned would be a condition of continuing the conferences. The American Commissioners confined that condition to their proposals touching Cuba, Porto Rico and other Spanish islands in the West Indies, Guam and the Philippines. In respect of the other matters referred to, they express their readiness to "treat," in case the Spanish Commissioners should remove the obstacle to so doing, by a definite and final acceptance of the proposals above mentioned, the refusal of which would render the continuance of the conferences impracticable.

In what I have just said, you will find an answer to your seventh question.

It does not appear to be necessary to specify at this moment the particulars of the subjects referred to in your fourth, fifth and sixth questions, since, if our proposals in regard to Cuba, Porto Rico and other Spanish islands in the West Indies, Guam and the Philippines, are not accepted, the negotiations will end. I deem it proper, however, even at the risk of seeming to anticipate, to say, so far as concerns the subject of your fourth question, that the American Commissioners would expect to treat for the release of prisoners on the basis of absolute equality. All Spanish prisoners in the possession of the American forces would necessarily be released as the result of a treaty of peace; and the American Commissioners would be willing to stipulate that their Government would undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines.

With an expression of regret that the process of translating your letter has somewhat delayed my reply, I beg you to accept, my dear sir, the expression of my distinguished consideration.

Signed: WILLIAM R. DAY.

COMISION

Para la Negociacion de la Paz Con los Estados Unidos.

Honorable M. William R. Day,

Presidente de la Comision americana para la paz con Espana.

Muy Senor mio de mi distinguida consideracion,

A fin de adelantar cuanto sea posible los trabajos que por ambos Gobiernos a una y otra Comision han sido encomendados, y que ya requieren una proxima terminacion, ruego a Vd., en nombre de esta Comision que se sirva proponer a la de su digna presidencia si esta dispuesta a aceptar por via de transaccion sobre la soberania del Archipiélago Filipino cualquiera de las tres proposiciones siguientes:

A.—"Renuncia de Espana a su soberania en Cuba y cesion de Puerto Rico y demas Antillas, Isla de Guam en las Ladroneas y Archipiélago Filipino, incluso Mindanao y Jolo, a los Estados Unidos, habiendo de satisfacer estos a Espana la cantidad de cien millones de dollars (\$100,000,000) en compensacion de su soberania en el archipiélago y de las obras de utilidad publica ejecutadas durante su dominacion en todas las Islas de Oriente y Occidente cuya soberania renuncia y cede."

B.—"Cesion a los Estados Unidos de la Isla Cusaye en las Carolinas, del derecho de marre de un cable en cualquiera de ellas o de las Marianas, mientras sean del dominio de Espana, y del Archipiélago Filipino propiamente dicho, o sea empezando por el Norte, de las Islas Batanes, Babuyan, Luzon, Visayas y todas las demas que siguen al Sur hasta el mar de Jolo, reservandose Espana al Sur de este mar las Islas de Mindanao y Jolo, que nunca han formado parte del Archipiélago Filipino propiamente dicho."

Los Estados Unidos en compensacion de las Islas sobredichas, del derecho de amarre del cable y de las obras publicas ejecutadas por Espana en aquellas Islas durante su dominacion, abonaran a Espana la cantidad de cincuenta millones de dollars (\$50,000,000)."

C.—"Espana renuncia a su soberania en Cuba y cede gratuitamente a los Estados Unidos el Archipiélago Filipino propiamente dicho, ademas de Puerto Rico y demas Antillas y la Isla de Guam que cede en compensacion de los gastos de guerra e indemnizaciones de ciudadanos americanos por danos sufridos desde el principio de la ultima insurreccion cubana:

"Los Estados Unidos y Espana someteran a un tribunal arbitral cuales son las deudas y obligaciones de caracter colonial, que deban pasar con las Islas cuya soberania Espana renuncia y cede."

Ruego a Vd. que esa Comision se sirva deliberar sobre cada una de estas proposiciones por si considera aceptable cualquiera de ellas, comunicandome si lo tiene a bien antes del lunes proximo 28 del corriente o teniendo formado ya su juicio para dicho dia (que es el fijado en la ultima proposicion de esa Comision), en que podran reunirse ambas en pleno a la hora acostumbrada de las dos de la tarde, y en cuya sesion esta Comision espanola dara su definitiva contestacion, de que, segun la de la americana, habra de depender la continuacion o terminacion de estas conferencias.

Queda de Vd. con la mayor consideracion atento servidor q. l. b. l. m.

Firmado: E. MONTERO RIOS.

Paris, 23 de Noviembre de 1898.

(Annex 3 to Protocol No. 16.)

COMMISSION

FOR THE NEGOTIATION OF PEACE WITH THE UNITED STATES.

Hon. WILLIAM R. DAY,

President of the American Commission for Peace with Spain.

My Dear and Esteemed Sir:

In order to push to the utmost the work which has been entrusted by the two Governments to one and the other Commission and which now requires a prompt termination, I beg you, in the name of this Commission, to be pleased to propose to that worthy headed by you whether it is willing to accept, by way of compromise in re the sovereignty of the Philippine Archipelago, any of the three propositions following:

A.—"Relinquishment by Spain of her sovereignty over Cuba and cession of Porto Rico and other Antilles, Island of Guam in the Ladrões and the Philippine Archipelago, including Mindanao and Sulu, to the United States, the latter paying to Spain the sum of one hundred million (\$100,000,000) dollars as compensation for her sovereignty in the Archipelago and the works of public utility she has executed during her rule in all the islands of the East and West the sovereignty over which she relinquishes and cedes."

B.—"Cession to the United States of the Island of Cusaye in the Carolines, of the right to land a cable on any of these or of the Marianas, while they remain under Spanish rule, and (cession) of the Philippine Archipelago proper, that is, beginning on the north, the Islands of Batanes, Babuyan, Luzon, Visayas and all the others following to the south as far as the Sulu Sea, Spain reserving to the south of this sea the Islands of Mindanao and Sulu which have never formed a part of the Philippine Archipelago proper."

"The United States, as compensation for said islands, for the right to land cables and for the public works executed by Spain in said islands during her rule, will pay to Spain the sum of fifty million (\$50,000,000) dollars."

C.—"Spain relinquishes her sovereignty over Cuba and gratuitously cedes to the United States the Philippine Archipelago proper, besides Porto Rico, the other West Indies and the Island of Guam, which she cedes as compensation for the expenses of the war and as indemnity to American citizens for injuries suffered since the beginning of the last Cuban insurrection."

"The United States and Spain will submit to an arbitral tribunal what are the debts and obligations of a colonial character which should pass with the islands the sovereignty over which Spain relinquishes and cedes."

I beg you that said Commission be pleased to deliberate over each of these propositions so that, should it consider any one of them acceptable, it may be communicated to me, should you be so disposed, before Monday next, the 28th instant, or your mind being already made up, on that day (which is the one set in the last proposition of the said Commission) when the two Commissions may meet jointly at the usual hour of two p. m., at which session this, the Spanish Commission, will give its final reply, upon which, according to the answer of the American, must depend the continuation or termination of these conferences.

I remain, with the greatest consideration, your obedient servant.

Signed: E. MONTERO RIOS.

Paris, November 23, 1898.

Annex 4 to Protocol No. 16.

United States and Spanish Peace Commission.

United States Commissioners.

Paris.

November 26, 1898.

My Dear Sir:

Your letter dated the 23rd instant, in which you propose, by way of compromise, the adoption of one of three alternative propositions, in place of the proposition submitted by the American Commissioners at our last conference, was not received by me till the evening of the 24th.

I at once had it carefully translated, and, in compliance with your request, laid it before my associates.

We maturely considered it, and, although our last proposition, which was submitted under instructions, was expressly declared to be final, we decided, in view of the importance of the subject, to communicate your proposals to our Government.

Its answer has just been received; and, as we anticipated, it instructs us to adhere to the final proposition which we have already submitted.

It is proper to say that my associates and myself, during the long course of the negotiations, have, in accordance with the wishes of our Government, given the most deliberate attention to everything in the way of argument or of suggestion that has been brought to our notice, in the hope that some basis of mutual agreement might be found. But, unfortunately, our discussions seemed to divide us, rather than to bring us together, and no progress was made toward a common accord.

Under these circumstances the American Commissioners, acting upon explicit instructions, offered at once, for the sake of peace, all the concessions which their Government was able to make concerning the particular matters embraced in the proposition the acceptance of which was made a condition of further negotiations.

As I stated in my letter of the 23rd instant, if that proposition should be accepted, the matters referred to in the concluding paragraph of the paper submitted by the American Commissioners at the last session, would become the subject of negotiations, and, in regard to them, I should hope for a mutually satisfactory arrangement.

The American Commissioners expect to be present at the Ministry of Foreign Affairs on Monday next for the purpose of receiving the answer to their final proposition.

I remain, with the highest consideration, your obedient servant,

Signed: WILLIAM R. DAY.

Senor Don E. Montero Rios, etc., etc., etc.

Protocol No. 17.

CONFERENCE

of November 30, 1898.

Present—

On the part of the United States:

**Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

On the part of Spain:

**Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.**

The protocol of the preceding session was read and approved.

The President of the American Commission presented a draft of articles with reference to the conclusion of a definite treaty, in the first part of which draft were included the articles agreed upon by the two Secretaries for submission to the Joint Commission, in relation to the matters comprised in the proposition accepted by the Spanish Commissioners at the last session.

The Joint Commission then proceeded to the consideration of the draft, article by article, and, after discussing some of the articles, decided to adjourn the session, and to continue the discussion at the next conference, which was fixed for Thursday, the 1st of December, at three o'clock p. m.

Signed: WILLIAM DAY.

**CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.**

Protocolo No. 17.

CONFERENCIA

Del 30 de Noviembre de 1898.

Presentes—

Por parte de los Estados Unidos de America:

**los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.**

Por parte de Espana:

**los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.**

Fue leida y aprobada el acta de la sesion anterior.

El Presidente de la Comision americana presenta un proyecto de articulos para la conclusion de un tratado de paz definitivo, en cuya parte primera estan incluidos los que fueron acordados entre los Secretarios de ambas Comisiones para ser sometidos a la Comision en pleno, relativos a las materias comprendidas en la proposicion aceptada por los Comisarios espanoles en la ultima sesion.

La Comision en pleno procedio entonces al examen de los articulos uno por uno y despues de discutir algunos de ellos, decidio levantar la sesion y continuar la discusion en la proxima conferencia, que se fijo para el jueves 1 de Diciembre a las 3 p. m.

Firmado: E. MONTERO RIOS,

**B. DE ABARZUZA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.**

CONFERENCE

of December 2, 1898.

The session which was to have been held yesterday having been postponed by mutual agreement, owing to a lack of time to examine the modifications and additions proposed by the Spanish Commissioners to the draft of a treaty presented by the American Commissioners at the session of November 30, the two Commissions met to-day at two p. m., there being.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The President of the American Commission observed that at the last session he had presented a draft of articles for a final treaty, and asked the Spanish Commissioners if they had examined it, and were ready to give their reply.

The President of the Spanish Commission answered that he had consulted his Government, and that he could not reply until he had received its instructions; but that, in any case, the Spanish Commission was not inclined to treat of subsidiary points as the American Commission desired, without having first disposed of all the points essential to the treaty of peace.

The President of the American Commission asked the President of the Spanish Commission whether he could state when he would receive the instructions; and the latter replied that he would probably receive them to-day or to-morrow.

The American Commissioners proposed that the Commission proceed to the reading and discussion of the articles presented by them that were not taken up at the last session. The President of the Spanish Commission observed that as those articles were divided into two parts, one comprising the first eight articles examined and approved at the last session with the exception of four points, three of which the Americans were to examine and the fourth of which

CONFERENCIA

Del 2 de Diciembre de 1898.

Aplazada de comun acuerdo la conferencia que debió celebrarse ayer por falta de tiempo para examinar las modificaciones y adiciones propuestas por los Comisarios españoles al proyecto de tratado presentado por los Comisarios americanos en la sesión del 30 de Noviembre, reunieron hoy a las 2 p. m. ambas Comisiones, hallándose

Presentes—

Por parte de los Estados Unidos de América:

los Señores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de España:

los Señores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leída y aprobada el acta de la sesión anterior.

El Presidente de la Comisión americana recuerda que en la última sesión presentó un proyecto de artículos para un tratado definitivo y pregunta a los Comisarios españoles si lo han examinado y están dispuestos a dar una contestación.

El Presidente de la Comisión española manifiesta que ha consultado a su Gobierno y no puede contestar hasta haber recibido sus instrucciones; pero de todos modos no está dispuesta la Comisión española a tratar de los puntos accesorios que desea la americana sin que antes se haya concluido con todo lo relativo a lo que constituye esencialmente el tratado de paz.

El Presidente de la Comisión americana pregunta al de la española si puede decirle cuando recibirá dichas instrucciones, y le responde que probablemente las recibirá de hoy a mañana.

Proponen los Comisarios americanos que se proceda a la lectura y discusión de los artículos por ellos propuestos que no fueron examinados en la sesión anterior; y el Presidente de la Comisión española hace observar que dividiéndose dichos artículos en dos partes,—una compuesta de los ocho primeros artículos ya examinada y aprobada en la última sesión, salve cuatro puntos, tres de los cuales quedaron los americanos en estudiar y el 40 quedaron los es-

was to be submitted by the Spaniards to their Government, and as the other part also dependent upon instructions from that Government, he deemed it useless to examine and discuss the latter part. And on the other hand, he stated that the Secretary General of the Spanish Commission had delivered to the Secretary General of the American Commission a draft of other articles which must necessarily form part of the treaty of peace and with respect to which the American Commissioners had not as yet given an answer; and further that the American Commission was to have consulted its Government and to give an answer to-day on the three points above mentioned as forming a part of some of the eight articles already approved, which answer was necessary in order that the agreement previously reached upon these articles might be enlarged; and that, therefore, with a view to preserve in the discussion the natural order, he considered it requisite that the articles that were indispensable to such treaty should be completed by the answer of the American Commissioners before passing on to the discussion of points of minor interest which did not affect the concluding of peace, though this did not imply that the Spanish Commissioners did not entertain the desire to take them up at the proper time.

The American Commissioners insisted that these subsidiary points be taken up, or all discussion be postponed until the Spanish Commissioners shall have received instructions to treat upon all the points which have been submitted to them.

The President of the Spanish Commission held to his opinion, insisting that even after the instructions of his Government with respect to the subsidiary points were received, the Spanish Commission would not discuss them until after the termination of the discussion of the articles which it had presented, and which related to the treaty of peace proper. The American Commission having inquired as to what were the three points to which the President of the Spanish Commission had above referred, which the American Commissioners were to examine, he replied that they were as follows: The extending to Cuba and Porto Rico of the commercial treatment granted to Spain in the Philippines; the repatriation at the expense of both nations of the prisoners taken, and the return to Spain of the war material in Cuba and Porto Rico with respect to which the evacuation commissions had not come to a decision, since such material in the Philippines, he understood, belonged to Spain. He added that the Spanish Commission had promised to consult its Government regarding the maintenance of public order in the Philippines, and that if the American Commissioners were ready to enter upon the dis-

panoles en consultar a su Gobierno,— y la otra pendiente tambien de instrucciones de su Gobierno, cree inutil examinar y discutir esta ultima. En cambio hace presente que el Secretario General de la Comision espanola ha entregado al de la americana el proyecto de los demas articulos que debe formar parte necesariamente del tratado de paz, y sobre los cuales hasta el presente momento la Comision americana nada ha contestado, y ademas que la Comision americana quedo en consultar a su Gobierno y en dar hoy contestacion sobre dichos tres indicados puntos relativos a algunos de los ocho articulos aprobados que faltaban para ampliar sobre dichos puntos el acuerdo ya lomado sobre aquellos, y que por tanto, con objeto de guardar en la discusion el orden natural, considera necesario que se completen estos articulos indispensables de dicho tratado con la contestacion de los Comisarios americanos, antes de pasar a discutir puntos de menor interes que no afectan a la conclusion de la paz, lo cual no quiere decir que los Comisarios espanoles no tengan el deseo de tratar oportunamente de ellos.

Insisten los Comisarios americanos en que deben ser examinados estos puntos subsidiarios, o renunciarse a toda discusion, hasta que los Comisarios espanoles hayan recibido instrucciones para tratar sobre todos los puntos que les hayan sido sometidos.

Mantiene el Presidente de la Comision espanola su opinion insistiendo en que aun despues de recibidas las instrucciones de su Gobierno sobre tales puntos accesorios, la Comision espanola no entrara a discutirlos sino despues que se haya terminado la discusion de los articulos que tiene presentados, y que son relativos al tratado de paz propriamente dicho; y habiendole preguntado la Comision americana cuales eran los tres puntos a que se referia el Presidente de la Comision espanola y que debian ser examinados por la Comision americana, contesta que son tres, a saber; ampliacion a Cuba y Puerto Rico del trato comercial concedido a Espana en Filipinas, repatriacion por cuenta de ambas naciones de los prisioneros hechos, y devolucion a Espana del material de guerra en Cuba y Puerto Rico de que ya no hubieran dispuesto las Comisiones de evacuacion, porque en cuanto al existente en Filipinas, entiende el Presidente que pertenecia a Espana. Añade que por su parte la Comision espanola se comprometo a consultar acerca del mantenimiento del orden publico en Filipinas, y que si los Comisarios americanos estan dispuestos a aceptar la discusion a que les invita, el se compromete sin haber recibido instrucciones, a dar sobre este punto una

cussion to which they were invited, he would, without having received instructions, undertake to give a categorical answer upon this point, which answer he was confident his Government would ratify.

The discussion continued, the American Commission, insisting on its proposal to discuss the whole of its draft, or to postpone all discussion until the Spanish Commission should have instructions upon all points. The Spanish Commission, holding to its opinion that it was duly authorized to treat upon everything essential to the treaty of peace, and therefore ready to sign its articles at once, but determined not first to treat of those points which are not essential to the treaty, asked that its readiness to discuss in the natural order whatever related directly to the treaty of peace, be spread upon the minutes.

The arguments on both sides having been repeated, the President of the American Commission stated that he as well as his colleagues hoped that the relations of the two countries might not be limited to the strict terms of a treaty of peace, but rather that an agreement might be reached for mutual concessions which would be beneficial to both Governments and promote the cordiality in their relations. The President of the Spanish Commission stated that this was also the desire of the Spanish Commissioners, but that to his mind it would be easier to reach an understanding upon the less important points if the decisions arrived at on the necessary articles of the treaty of peace were satisfactory.

The American Commissioners proposed to adjourn the session in order that the instructions awaited by the Spanish Commissioners might arrive, and to examine the articles presented by the latter.

The Spanish Commissioners agreed to this, and the session was adjourned till Saturday, the 3rd instant, at two p. m.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

respuesta categorica que su Gobierno confia en que ratificara.

Continuo la discusion manteniendo la Comision americana su proposito de discutir el conjunto de su proyecto, o de aplazar toda discusion, hasta que la espanola tenga instrucciones sobre todos sus extremos, y sosteniendo la espanola su criterio de que estan debidamente autorizados a tratar de cuanto constituye el tratado de paz esencialmente dicho, dispuestos por tanto a firmar sus clausulas al punto; pero resueltos a no tratar antes aquellos puntos que no son esenciales a dicho tratado, desean conste en el acta su disposicion a seguir discutiendo por su orden natural cuanto a dicho tratado de paz directamente se refiera.

Replintense los argumentos por una y otra parte, y habiendo manifestado el Presidente de la Comision americana que tanto el como sus colegas esperaban que no se limitarian las relaciones de ambos paises a las condiciones estrictas de un tratado de paz, sino que podria llegarse a un acuerdo sobre mutuas concesiones beneficiosas para ambos Gobiernos, y que fomentarian la cordialidad en sus relaciones, el Presidente de la Comision espanola manifesto que tales eran tambien los deseos de los Comisarios espanoles, pero que en su sentir cuanto mas satisfactorias fuesen las soluciones dadas a los articulos indispensables del tratado de paz, mas se facilitaria la inteligencia a que podria llegarse respecto de los demas puntos menos importantes.

Los Comisarios americanos propusieron aplazar la sesion a fin de dar lugar a que llegasen las instrucciones que aguardaban los Comisarios espanoles y a estudiar los articulos por estos presentados.

Acordado asi por la Comision espanola, se aplazo la sesion para el sabado 3 del corriente a las 2 p. m.

Firmado: E. MONTERO RIOS,
B. DE ABARZUA,
J. DE GARNICA,
W. R. DE VILLA-URRUTIA,
RAFAEL CERERO,
EMILIO DE OJEDA.

Protocol No. 19.

CONFERENCE

Of December 5, 1898.

At the request of the American Commissioners the session which was to have been held on Saturday, the 3d instant, was postponed until to-day at 3 p. m. when there were

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The President of the American Commission asked the President of the Spanish Commission whether he had received instructions from his Government touching the points on which the American Commissioners desired to treat.

The President of the Spanish Commission replied that he had in fact received them; but he reiterated his purpose not to take up those points until the matters inherent in and essential to the treaty of peace proper should be discussed and finally approved.

It was agreed that the Commissions should communicate to each other the answers of their respective Governments to the questions previously submitted to them. The President of the American Commission stated, in the first place, that his Government was not willing to grant and embody in the treaty of peace the extension to Porto Rico and Cuba of the commercial treatment offered to Spain in the Philippines for ten years; but that, recognizing the advisability of concluding a commercial agreement between the countries, the subject might be treated of in a general commercial convention.

With respect to the return and transportation at the expense of each nation of the prisoners taken by it, it was agreed, as an addition to Article VIII, that Spain and the United States should transport them at their expense to the nearest port of their respective countries, but that the transportation of prisoners of war taken in the Philippines should not include native soldiers, but only Peninsular Spaniards

Protocol No. 19.

CONFERENCIA.

Del 5 de Diciembre de 1898.

A petición de los Comisarios americanos la sesión que debió celebrarse el sábado 3 del corriente fue aplazada para hoy a las 3 hallándose en dichos día y hora

Presentes—

Por parte de los Estados Unidos de América:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de España:

los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leída y aprobada el acta de la sesión anterior.

Pregunta el Presidente de la Comisión americana al Presidente de la Comisión española si ha recibido instrucciones de su Gobierno relativas a los puntos que la Comisión americana deseaba tratar, y el Presidente de la Comisión española contesta que en efecto las ha recibido, pero que reitera su propósito de no tratar dichos puntos hasta que se hayan discutido y aprobado definitivamente los asuntos que son inherentes y esenciales al tratado de paz propiamente dicho.

Se convino en comenzar por comunicarse ambas Comisiones las contestaciones respectivas de sus Gobiernos a los puntos que les fueron sometidos anteriormente y manifiesta el Presidente de la Comisión americana en primer lugar, que su Gobierno no está dispuesto a conceder y consignar en este Tratado de paz la extensión a Puerto Rico y a Cuba del trato comercial ofrecido a España durante diez años en Filipinas; pero que reconociendo la conveniencia de que se pacte un acuerdo comercial entre ambos países, podría tratarse este asunto en un tratado de comercio.

Respecto de la devolución y transporte por cuenta de una y otra Nación de los prisioneros hechos por cada una de ellas, se acuerda como adición al Artículo VIII, que España y los Estados Unidos los transportaran a su costa al puerto mas cercano de sus países respectivos, pero que el transporte de los prisioneros de guerra hechos en Filipinas, no se extendiera a los soldados indígenas sino a los individuos

in the army. The Secretaries-General of the two Commissions were charged with the framing of this addition to Article VIII.

With regard to the return of the war material in Cuba and Porto Rico not disposed of by the evacuation commissions, the American Commission declared that they were not authorized to treat.

With respect to the war material in the Philippines, the American Commissioners stated that it should be governed by the same conditions as were agreed to by the evacuation commissions in the West Indies.

The President of the Spanish Commission and his colleagues maintained that the cession of the archipelago did not carry and could not carry with it anything except what was of a fixed nature; they explained the character of the siege artillery and heavy ordnance which the Americans claimed for themselves, and after some discussion to the end of determining precisely what each commission understood as portable and fixed material, it was agreed that stands of colors, uncaptured war vessels, small arms, guns of all calibres with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds belonging to the land and naval forces, shall remain the property of Spain; that pieces of heavy ordnance, exclusive of field artillery, in the fortifications, shall remain in their emplacements for the term of six months to be reckoned from the ratification of the treaty; and that the United States might, in the mean time, purchase such material from Spain, if a satisfactory agreement between the two Governments on the subject should be reached.

It was agreed that the Secretaries-General of the two Commissions should be entrusted with the framing of such an article.

The President of the Spanish Commission having agreed at the last session to consult his Government regarding the proposal of the American Commissioners that the United States should maintain public order over the whole Philippine Archipelago, pending the exchange of ratifications of the treaty of peace, stated that the answer of his Government was that the authorities of each of the two nations shall be charged with the maintenance of order in the places where they may be established, those authorities agreeing among themselves to this end whenever they may deem it necessary.

In view of this reply the American Commissioners did not insist that their proposal should be incorporated in the treaty.

The reading in English and Spanish of the articles of the treaty from the first to the eighth inclusive was then proceeded with, and they were approved by both Commissions, which declared them to be final save as to mere modifications of form, upon which the Secretaries-General might endeavor to agree.

peninsulares de aquel ejército. Los Secretarios generales de ambas Comisiones quedan encargados de la redacción de esta adición al Artículo VIII.

En lo relativo a la devolución del material de guerra en Cuba y Puerto Rico de que no hayan dispuesto las Comisiones de evacuación, la Comisión americana se declara incompetente para tratar.

Respecto del material de guerra existente en Filipinas, los Comisarios americanos manifestaron que debía ajustarse a las mismas condiciones acordadas por las Comisiones de evacuación en las Antillas.

El Presidente de la Comisión española y sus colegas manifestaron que la cesión de dicho archipiélago no llevaba ni podía llevar consigo sino lo que es de carácter inmueble, explicaron las condiciones de la artillería de plaza y de sitio que reclamaban para sí los americanos, y después de alguna discusión al efecto de determinar con precisión lo que una y otra Comisión entendían por material portátil y material fijo, se conviene en que serán propiedad de España banderas y estandartes, buques de guerra no apresados, armas portátiles, cañones de todos calibres con sus montajes y accesorios, pólvoras, municiones, ganado, material y efectos de toda clase pertenecientes a los ejércitos de mar y tierra; que las piezas de grueso calibre, que no sean artillería de campana, colocadas en las fortificaciones y en las costas, quedaran en sus emplazamientos por el plazo de seis meses a partir del canje de ratificaciones del tratado; y que los Estados Unidos podran, durante este tiempo, comprar a España dicho material si ambos Gobiernos llegan a un acuerdo satisfactorio sobre el particular.

Se acuerda que los Secretarios Generales de ambas Comisiones queden encargados de redactar dicho artículo.

El Presidente de la Comisión española habiendo quedado en la sesión anterior en consultar a su Gobierno, respecto la proposición de los Comisarios americanos por la cual los Estados Unidos mantendrían el orden en todo el Archipiélago Filipino, mientras se ratificaba el tratado de paz, manifiesta que la contestación de su Gobierno es que las Autoridades de cada una de ambas naciones cuiden de conservar el orden en las regiones en que se hallen establecidas, y poniéndose con este objeto de acuerdo unas y otras cuando lo estimen necesario.

En vista de esta contestación, los Comisarios americanos no insistieron en que formase su proposición parte del tratado.

Se procede en seguida a la lectura en español y en inglés de los artículos del tratado desde el primero al ocho inclusive y son aprobados por ambas Comisiones, que los declaran definitivos, salvo cualquiera modificación de mera forma sobre las cuales tratarían de ponerse de acuerdo los Secretarios Generales.

The President of the American Commission desiring that the discussion of the matters presented by that Commission should next be taken up, the President of the Spanish Commission maintained the opinion which he had expressed at the last session, and at the beginning of this, to the effect that the examination of said matters should not be entered upon until the Commissions had discussed what was essential to the treaty of peace, and that therefore the articles additional to the first eight proposed by the Spanish Commission should be taken up.

It was agreed that in view of the lateness of the hour the session should be adjourned until to-morrow, Tuesday, the 6th instant, at 2 p. m.

Signed: WILLIAM R. DAY,
CUSHMAN K. DAVIS,
WM. P. FRYE,
GEO. GRAY,
WHITELOW REID,
JOHN B. MOORE.

Deseando entónces el Presidente de la Comisión americana que se pasase a la discusión de los puntos presentados por su Comisión, y manteniendo el Presidente de la Comisión española el criterio que había sostenido en la sesión anterior y al principio de esta, de que no podía pasarse al examen de dichos puntos sin haber antes discutido cuanto era esencial al tratado de paz, y tomando por tanto en consideración los artículos adicionales a los ocho primeros, propuestos por la Comisión española, acordose que en vista de lo avanzado de la hora se aplazase la sesión hasta mañana martes 6 del corriente a las dos p. m.

Firmado: E. MONTERO RIOS.
B. DE ABARZUA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

Annex to Protocol No. 14.

PREAMBLE.

The United States of America and Her Majesty the Queen Regent of Spain, in the name of her August Son Don Alfonso XIII., desiring to end the state of war now existing between the two countries, have for that purpose appointed as Plenipotentiaries:

The President of the United States, William R. Day, lately Secretary of State; Cushman K. Davis, a Senator of the United States; William P. Frye, a Senator of the United States; George Gray, a Senator of the United States, and Whitelaw Reid, lately Minister Plenipotentiary of the United States to France;

And Her Majesty the Queen Regent of Spain, (here insert names and titles).

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

ARTICLE I.

Spain hereby relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law attach to its character as occupant, for the protection of life and property.

ARTICLE II.

Spain hereby cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the Island of Guam in the Ladrões or Marianas.

ARTICLE III.

Spain hereby cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty-five minutes (4° 45') north latitude, thence along the parallel of four degrees and forty-five minutes (4° 45') north latitude to its intersection with the meridian of longitude one hundred and

PREAMBULO.

S. M. la Reina Regente de España, en nombre de Su Augusto Hijo Don Alfonso XIII., y los Estados Unidos de América, deseando poner termino al estado de guerra hoy existente entre ambas Naciones, han nombrado con este objeto por sus Plenipotenciarios, a saber:

S. M. la Reina Regente de España a (aquí se insertan los nombres) y el Presidente de los Estados Unidos de América a (aquí se insertan los nombres).

Los cuales reunidos en París, despues de haberse comunicado sus plenipotencias respectivas, habiendolas hallado en buena y debida forma, previa la discusion de las materias pendientes, han convenido en los articulos siguientes:

ARTICULO 1.

España por el presente reuneuncia todo derecho de Soberanía y propiedad sobre la Isla de Cuba.

En atencion a que dicha Isla esta a punto de ser evacuada por España y ocupada por los estados Unidos, los Estados Unidos mientras dure su ocupacion, tomarañ sobre si y cumpliran las obligaciones que el derecho internacional impone a un caracter de ocupantes, para la proteccion de vidas y haciendas.

ARTICULO 2.

España par el presente Tratado cede a los Estados Unidos la Isla de Puerto Rico y las demas que estan ahora bajo su soberanía en las Indias Occidentales, y la Isla de Guam en el Archipielago de las Marianas o Ladrões.

ARTICULO 3.

Cede tambien España a los Estados Unidos el Archipelconocido por Islas Filipinas, situado dentro de las lineas siguientes:

Una línea que corre de Oeste a Este, cerca del 20 deg. paralelo de latitud Norte, a traves de la mitad del canal navegable de Bachi, desde el 118 deg. al 127 deg. grados de longitud Este de Greenwich; de aquí a lo largo del ciento veintisiete (127) grado meridiano de longitud Este de Greenwich al paralelo cuatro grados cuarenta y cinco minutos (4 deg. 45 min.) de latitud Norte; de aquí agnendo el paralelo de cuatro grados euarenta y cinco minutos de latitud Norte (4 deg. 45 min.) hasta su interseccion con el meridiano de longitud ciento diez y nueve grados y treinta y cinco minutos (119 deg. 35 min.) Este de

nineteen degrees and thirty-five minutes (119° 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty-five minutes (119° 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7° 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7° 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty.

ARTICLE IV.

The United States will, upon the signature of the present treaty, send back to Spain, at its own cost, the Spanish soldiers taken as prisoners of war on the capture of Manila by the American forces. The arms of the soldiers in question shall be restored to them.

Spain will, upon the exchange of the ratifications of the present treaty proceed to evacuate the Philippines, as well as the Island of Guam, on terms similar to those agreed upon by the Commissioners appointed to arrange for the evacuation of Porto Rico and other Islands in the West Indies, under the Protocol of August 12, 1898, which is to continue in force till its provisions are completely executed. The time within which the evacuation of the Philippines and of the Island of Guam shall be completed shall be fixed by the two Governments.

ARTICLE V.

In conformity with the provisions of Articles I, II and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other Islands in the West Indies, in the Island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which in conformity with law belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civil bodies, or any other associations having legal capacity to acquire and possess prop-

Greenwich; de aqui siguiendo el meridiano de longitud ciento diez y nueve grados y treinta y cinco minutos (119 deg. 35 min.) Este de Greenwich al paralelo de latitud siete grados cuarenta minutos (7 deg. 40 min.) Norte, de aqui siguiendo el paralelo de latitud siete grados cuarenta minutos (7 deg. 40 min.) Norte a su interseccion con el ciento diez y setis (116 deg.) grado meridiano de longitud Este de Greenwich, de aqui por una linea recta a la interseccion del decimo grado paralelo de latitud Norte, con el ciento diez y ocho (118 deg.) grado meridiano de longitud Este de Greenwich, y de aqui siguiendo el ciento diez y ocho grado (118 deg.) meridiano de longitud Este de Greenwich al punto en que comienza esta demarcacion.

Los Estados Unidos pagaran a Espana la suma de veinte millones de dollars (\$20,000,000) dentro de tres meses despues del canje de ratificaciones del presente tratado.

ARTICULO 4.

Los Estados Unidos al ser firmado el presente tratado trasportaran a Espana a su costa los soldados espanoles que hicieron prisioneros de guerra las fuerzas Americanas al ser capturada Manila. Las armas de estos soldados les seran devueltas.

Espana al ratificarse el presente tratado, procedera a evacuar las Islas Filipinas, asi como la de Guam, en condiciones semejantes a las acordadas por las comisiones nombradas para concertar la evacuacion de Puerto Rico y otras Islas en las Indias Occidentales, segun el Protocolo de 12 de Agosto de 1898, que continuara en vigor hasta que sean completamente cumplidas sus disposiciones. El termino dentro del cual sera completada la evacuacion de las Islas Filipinas y de la de Guam, sera fijada por ambos Gobiernos.

ARTICULO 5.

En cumplimiento de lo convenido en los articulos 1, 2 y 3 de este tratado, Espana renuncia en Cuba y cede en Puerto Rico y en las otras Islas de las Indias Occidentales y en la Isla de Guam, en las Islas Filipinas, todos los edificios, muelles, cuarteles, fortalezas, establecimientos, vias publicas y demas bienes inmuebles, que con arreglo a derecho son del dominio publico y como tal corresponden a la Corona de Espana.

Queda por lo tanto declarado que esta renuncia o cesion, segun el caso, a que se refiere el parrafo anterior, en nada puede menar la propiedad o los derechos que correspondan con arreglo a las leyes al poseedor pacifico, de los bienes de todas clases de las provincias, municipios, establecimientos publicos o prevados, corporaciones civiles o ecclesiasticas, o de cualesquiera otras colectividades que tienen per-

erty in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to such sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

ARTICLE VI.

The United States and Spain, in consideration of the provisions of this treaty, hereby mutually relinquish all claims for indemnity, national and individual, of every kind, (including all claims for indemnity for the cost of the war,) of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the ratification of the present treaty.

ARTICLE VII.

The United States will, for the term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States.

sonalidad jurídica para adquirir y poseer bienes en los mencionados territorios renunciados o cedidos, y los de los individuos particulares cualquiera que sea su nacionalidad.

Dicha renuncia o cesion, segun el caso, incluye todos los documentos que se refieran exclusivamente a dicha Soberania renunciada o cedida que existan en los Archivos de la Peninsula. Cuando estos documentos existentes en dichos Archivos, solo en parte correspondan a dicha Soberania, se facilitarin copias de dicha parte, siempre que sean solicitadas. Reglas analogas habran reciprocamente de observarse en favor de Espana respecto de los documentos existentes en los Archivos de las Islas antes mencionadas.

En las antecitadas renuncia o cesion, segun el caso, se hallan comprendidos aquellos derechos de la Corona de Espana y de sus Autoridades sobre los Archivos y Registros Oficiales, así administrativos como judiciales de dichas Islas que se refieran a ellas o a los derechos y propiedades de sus habitantes. Dichos archivos, registros, etc., deberan ser cuidadosamente conservados y los particulares sin excepcion, tendran derecho a sacar con arreglo a las Leyes, las copias autorizadas de los contratos, testamentos y demas documentos que formen parte de los protocolos notariales o que se custodien en los archivos administrativos o judiciales, bien estos se hallen en Espana, o bien en las Islas de que se hace mencion anteriormente.

ARTICULO 6.

Espana y los Estados Unidos de America en atencion a lo establecido por este tratado, renuncian mutuamente por el presente a toda reclamacion de indemnizacion nacional o privada de cualquier genero (incluyendo toda reclamacion por indemnizaciones por el coste de la guerra), de un Gobierno contra el otro, o de sus subditos o ciudadanos contra el otro Gobierno, que puedan haber surgido desde el comienzo de la ultima insurreccion en Cuba y anterior a la ratificacion del presente tratado.

ARTICULO 7.

Los Estados Unidos durante el termino de diez anos a contar desde el canje de la ratificacion del presente tratado, admitiran en los puertos de las Islas Filipinas los buques y las mercancías espanoles, bajo las mismas condiciones que los buques y las mercancías de los Estados Unidos.

ARTICLE VIII.

Spain will, upon the signature of the present treaty, release all persons held by her as prisoners, military or political, in connection with the insurrections in Cuba and the Philippines, and the war with the United States.

Reciprocally, the United States will release all persons made prisoners of war by the American forces, and will undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines.

ARTICULO 8.

Espana al ser firmado el presente tratado, pondra en libertad a todos los detenidos en calidad de prisioneros de guerra o por delitos politicos, a consecuencia de las insurrecciones en Cuba, y en Filipinas, y de la guerra con los Estados Unidos. Reciprocamente los Estados Unidos pondran en libertad a todos los prisioneros de guerra hechos por las fuerzas Americanas y gestionaran la libertad de todos los prisioneros espanoles en poder de los insurrectos de Cuba y de Filipinas.

CONFERENCE

Of December 6, 1898.

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and adopted.

The President of the American Commission, referring to the discussion that had taken place at the two preceding sessions on the subject of procedure, stated that he recognized the force of the position of the President of the Spanish Commission that the articles relating to the necessary part of the treaty should first be taken up; but that, in the opinion of the American Commissioners, nothing was more strictly pertinent to a treaty of peace than a clause for the revival of treaties, which the war had suspended or terminated, such, for example, as the extradition treaty between the two countries; and he therefore proposed that the Joint Commission should take up first, the article proposed by the American Commissioners for the revival of former treaties, then the articles proposed by the Spanish Commissioners, and then the rest of the articles proposed by the American Commissioners.

The President of the Spanish Commission replied that he felt compelled to insist upon the contention of that Commission on the subject of procedure, and that he begged to differ as to the order in which the article for the revival of treaties should be discussed; while such an article might be relevant to a treaty of peace, yet it was usually the last article of all, and should, therefore, be the last considered.

The President of the American Commission observed that, while the American Commissioners felt that their view was reasonable and proper, they desired to proceed with the business of the Joint Commission; and he inquired whether, if the articles proposed by the Spanish Commission were taken up and considered,

Presentes—

Por parte de los Estados Unidos de América:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSSON.

Por parte de España:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

El acta de la sesion anterior fue leida y aprobada.

El Presidente de la Comisión americana, refiriéndose a la discusión habida en las dos anteriores sesiones respecto al orden de trabajos, declaró reconocer la razón que tenía el Presidente de la Comisión española para discutir en primer término los artículos relativos a la parte necesaria del tratado; pero que, en opinión de los Comisarios americanos, nada había más estrictamente pertinente a un tratado de paz que la renovación de los tratados suspendidos o terminados por la guerra, tales como, por ejemplo, el tratado de extradición entre los dos países; por lo cual proponía que la Comisión en pleno se ocupara en primer término del artículo propuesto por los Comisarios americanos para renovar los anteriores tratados, siguiendo con los artículos propuestos por los Comisarios españoles y acabando con los demás artículos propuestos por los Comisarios americanos.

El Presidente de la Comisión española replicó que debía insistir en el punto de vista adoptado por esta Comisión respecto al procedimiento, sintiendo no estar de acuerdo respecto al orden en que se habla de discutir el artículo relativo a la renovación de los tratados, pues si bien es verdad que este artículo suele insertarse en los tratados de paz, o dinariamente es el último de todos, y debe por lo tanto ser el último de los que se estudian.

El Presidente de la Comisión americana replicó que, aunque los Comisarios americanos entendían que su punto de vista era razonable y adecuado, deseaban sin embargo adelantar los trabajos de la Comisión mixta, y preguntó que si los artículos propuestos por la Comisión española eran discutidos y examinados, serían a su vez todos los artículos propuestos por la Comisión americana de igual manera discutidos

all the articles proposed by the American Commission would then in like manner be taken up and considered.

The President of the Spanish Commission answered in the affirmative, adding that he had not proposed to take up the articles of the Spanish Commission because they were its articles, but because they were specially appropriate to a treaty of peace.

The President of the American Commission then took up the subject of nationality, in regard to which the American Commission originally presented the following article:

"ARTICLE VI. Spanish subjects residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory, or may remove therefrom, retaining, in either event, all their rights of property; and, in case they remain, they may preserve their allegiance to the Crown of Spain, by making, before a court of record, within a year from the date of the signature of this treaty, a declaration of their decision to reserve such allegiance, in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. Except as provided in this treaty, the civil rights and political status of the inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

To this article the Spanish Commissioners proposed on the 30th of November the amendments contained in the two following articles:

"NATIONALITY.

"ARTICLE —. Spanish subjects now or hereafter residing or domiciled in the territory the sovereignty over which Spain relinquishes or cedes by the present treaty may live in or withdraw from said territory, acquiring and retaining in either case every kind of property, or alienating and freely disposing thereof or of its value or proceeds; practice, with the freedom they now enjoy, industry, commerce, and other mechanical or liberal professions, and enjoy their personal status, without being subject to any exception prejudicial to the rights secured to them by this treaty. If they remain in the territory they shall be allowed to preserve their nationality by making before the proper officer a declaration of such intention, within the term of one year, to be reckoned from the date of the exchange of ratifications of this treaty or the taking up of their residence therein.

"Failure to comply with this requirement shall be considered as a renunciation of their nationality and the adoption of that of the

y examinados.

El Presidente de la Comisión española contestó afirmativamente, añadiendo que no había propuesto discutir los artículos de la Comisión española porque fuesen los suyos propios, sino porque eran especialmente propios de un tratado de paz.

El Presidente de la Comisión americana empezó ocupándose de la nacionalidad, respecto a la cual la Comisión americana presentó en un principio el artículo que sigue:

"ARTICULO VI. Los subditos españoles que residan en el territorio cuya soberanía España ha renunciado o cedido por el presente tratado, podrán permanecer en dicho territorio, o podrán salir de él, conservando en ambos casos todos sus derechos de propiedad, y en el caso de que permanecieran en él, podrán conservar su nacionalidad española haciendo ante una oficina de registro, dentro del año de la fecha de la firma de este tratado, una declaración de su propósito de conservar dicha nacionalidad; a falta de esta declaración, se considerará que han renunciado su nacionalidad y aceptado la del territorio en que residen. A excepción de lo dispuesto por este tratado, los derechos civiles y la capacidad política de los habitantes de los territorios aquí cedidos a los Estados Unidos, serán definidos por el Congreso."

En 30 de Noviembre, los Comisarios españoles propusieron que este artículo se enmendara por medio de los dos artículos siguientes:

"Nacionalidad.

"ARTICULO —. Los subditos españoles residentes o domiciliados al presente o en lo futuro en el territorio cuya soberanía España renuncia o cede por el presente tratado, podrán vivir en dicho territorio o retirarse de él adquiriendo y conservando en uno u otro caso, toda clase de propiedad o realizándola y disponiendo libremente de ella o de su valor o producto, ejercer con la libertad que actualmente tienen, la industria, el comercio y demás profesiones mecánicas o liberales y gozar de su estatuto personal; sin que puedan ser sometidos a ningún régimen de excepción en perjuicio de los derechos que en este tratado se les reconocen. Si permanecen en el territorio, podrán conservar su nacionalidad haciendo ante una oficina pública de registro una declaración de su propósito de conservar dicha nacionalidad, dentro del término de un año, que se contará desde la fecha del canje de ratificaciones de este tratado, o desde que aquellos fijen allí su residencia.

"Si faltasen a este requisito, se les considerará como si la hubiesen renunciado y adoptado la nacionalidad del territorio en

territory in which they may reside. Save in the cases covered by this treaty, the civil rights and political condition of the Spaniards living in ceded territories, shall be governed by the laws applicable to all other foreigners in the territory of their residence.

"ARTICLE —. All the other inhabitants of the territories ceded shall have the right to choose the Spanish nationality within the period of one year to be reckoned from the date of the exchange of the ratifications of this treaty, the choice to be made in the manner provided for in the preceding article. Notice thereof shall be given immediately to the Spanish Government, or to its consular officers, and without which requisite the nationality thus chosen shall not be at any time recognized."

The American Commissioners proposed at this meeting as a substitute for the foregoing articles, the following article:

"ARTICLE VI. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

The President of the Spanish Commission objected to this article, as it was read, on various grounds; and, after some discussion, stated that with respect to the article in question, as well as the other articles which the American Commissioners might adopt, they would require, as a necessary condition of their adoption, the insertion in each article that was to run for a length of time, of a clause limiting the obligation of the United States thereunder, in respect to Cuba, to the time of its occupation of the island, or else the insertion in the treaty of a general clause to this effect, as follows:

"It is understood that any obligation assumed by the United States with respect to Cuba is limited to the time of its occupancy thereof."

que residan. Excepto en cuanto previene este tratado, los derechos civiles y condicion politica de los espanoles habitantes en los territorios cedidos, se regiran por las leyes comunes a todos los demas extranjeros en el territorio de su residencia."

"ARTICULO —. Los demas habitantes de los territorios cedidos podran optar por la nacionalidad espanola en el termino de un ano, a contar desde el cambio de ratificaciones de este tratado, habiendo de hacer esta opcion en la forma prescrita en el articulo anterior y ponerla inmediatamente ademas en conocimiento del Gobierno espanol o de sus agentes consulares, sin cuyo requisito no les sera reconocida en ningun tiempo la nacionalidad de su opcion."

Los Comisarios americanos proponen en esta sesion, que los anteriores articulos sean sustituidos por el siguiente:

"ARTICULO VI. Los subditos espanoles naturales de la Peninsula, que residan en el territorio cuya soberania Espana renuncia o cede por el presente tratado podran permanecer en dicho territorio o marcharse de el, conservando en uno u otro caso todos sus derechos de propiedad, con inclusion del derecho de vender o disponer de tal propiedad o de sus productos; y ademas tendran el derecho de ejercer su industria, comercio o profesion, sujetandose a este respecto a las leyes que sean aplicables a los demas extranjeros. En el caso de que permanezcan en el territorio, podran conservar su nacionalidad espanola haciendo ante una oficina de registro, dentro de un ano despues del cambio de ratificaciones de este tratado, una declaracion de su proposito de conservar dicha nacionalidad; a falta de esta declaracion, se considerara que han renunciado dicha nacionalidad y adoptado la del territorio en el cual pueden residir.

"Los derechos civiles y la condicion politica de los naturales que habitan los territorios aqui cedidos a los Estados Unidos se determinaran por el Congreso."

El Presidente de la Comision espanola presento varias objeciones al texto de este articulo, y despues de alguna discusion, el Presidente de la Comision americana declaro que con respecto al articulo en cuestion, como a los demas que los Comisarios americanos puedan aceptar, pediran que, como condicion necesaria de su adopcion, se inserte en todos los articulos que deban estar en vigor durante cierto tiempo, una clausula limitando la obligacion que de ellos se derive para los Estados Unidos, con respecto a Cuba, al tiempo de su ocupacion de la Isla, o en otro caso que se inscriba en el tratado una clausula general que diga:

"Se entiende que cualquier obligacion asumida por los Estados Unidos con respecto a Cuba, se limita al tiempo que ocupen a esta."

No conclusion having been reached on the articles in question, it was agreed that the rest of the articles should be read and then handed to the Spanish Commissioners, in order that they might consider them and give their answer to the counter-proposals of the United States at the next conference, and that all the articles should be inserted in the protocol of to-day's conference.

Pursuant to this agreement, the following articles offered by the Spanish Commission were read:

"GRANTS AND CONTRACTS FOR PUBLIC WORKS AND SERVICES.

"ARTICLE —. All grants and contracts for public works and services in the 'islands of Cuba, Porto Rico, the Philippines and other ceded territory shall be maintained in force until their expiration, in accordance with the terms thereof, the new Government assuming all the rights and obligations thereby attaching up to the present time to the Spanish Government.

"PUBLIC CONTRACTS.

"ARTICLE —. Contracts formally entered into by the Spanish Government or its authorities for the public service of the islands of Cuba, Porto Rico, the Philippines and others ceded by this treaty, and which contracts are still unperformed, shall continue in force until their expiration pursuant to the terms thereof. Such contracts as also cover the service peculiar to Spain or any of her other colonies, the new Government of the above mentioned islands shall not be called upon to carry out, save only in so far as the terms of said contracts relate to the particular service or treasury of such islands. The new Government will therefore, as regards the said contracts, be holden to all the rights and obligations therein attaching to the Spanish Government.

"List of Pending Contracts for Public Works and Services.

"Mail and transportation contract with the Compania Transatlantica.

"Contract with English company (Cuba Submarine) for the cable on the south of Cuba.

"Cable contract, Manila to Hong Kong, with another English company ('The Eastern').

"Railroad concessions from Manila to Dagupan.

"All other concessions for railroads now

No habiendose adoptado acuerdo alguno sobre este artículo, se convino en que se leyera los demas y se entregaran a los Comisarios españoles, para que pudieran examinarlos y contestar a las contra-proposiciones de los Estados Unidos en la sesion proxima, decidiendose ademas que, todos los articulos se insertaran en el protocolo de la conferencia de hoy.

En cumplimiento de este acuerdo, fueron leidos los siguientes articulos que habian sido propuestos por la Comision española:

Concesiones de obras y servicios publicos.

"ARTICULO —.

"Continuarian observandose igualmente todas las concesiones de obras y servicios publicos en las islas de Cuba, Puerto Rico, Filipinas y demas territorios cedidos, hasta su cancelacion, con arreglo a las clausulas con que hubiesen sido otorgadas, subrogandose el nuevo Gobierno en los derechos y en las obligaciones que por dichos contratos correspondieron hasta ahora al Gobierno español."

"Concesiones de obras y servicios publicos.

"ARTICULO —.

"Los contratos regularmente celebrados por el Gobierno español o por sus Autoridades para el servicio publico de las islas de Cuba, Filipinas, Puerto Rico y demas que se ceden por este tratado, y cuyos contratos esten pendientes de cumplimiento, continuaran observandose hasta su terminacion, con arreglo a sus clausulas.

"En aquellos en que tambien estuviese interesado el servicio peculiar de Espana o de cualquiera de sus demas colonias, el nuevo Gobierno de las islas sobredichas, no concurrira a su cumplimiento, sino en la parte que, con arreglo al contrato mismo, corresponda a su servicio y Tesoro especial.

"Quedara por lo tanto el nuevo Gobierno subrogado en lugar del español en todos los derechos y obligaciones que de los mencionados contratos pudieran resultaren en favor o en contra de aquel.

"Lista de contratos pendientes por obras y servicios publicos.

"Contrato para correos y trasportes con la Compania Transatlantica."

"Contrato de la Compania Inglesa (Cuba Submarine) para el cable en el Sur de Cuba.

"Contrato del cable de Manila a Hong Kong con otra Compania Inglesa (The Eastern).

"Concesion del ferrocarril de Manila a Dagupan.

"Todas las demas concesiones de ferro-

in operation or under construction in Cuba or Porto Rico.

"The above are all the contracts at present recalled, although it cannot be stated that there are not others relative to public works and services. None of recent date.

"December 1, 1898."

The President of the American Commission stated that the American Commissioners were constrained to reject these articles. The United States did not propose to repudiate any contract found upon investigation to be binding under international law; but no such clauses as now proposed had been inserted in treaties heretofore made by the United States with Spain, France, Mexico and Russia, for the acquisition of territory; and it might be assumed that the United States would deal justly and equitably in respect of contracts that were binding under the principles of international law.

The following article, proposed by the Spanish Commission, was then read:

"RELIGION.

"ARTICLE.—The Roman Catholic Apostolic Religion, its institutions and ministers, shall continue to enjoy in all the territories which are the subject of this treaty, the liberty and the rights in the undisturbed possession of which they are at present.

"The members of this Church, whatever their nationality, shall continue to enjoy the same liberty they now enjoy, with respect to the profession of their religion and the exercise of their form of worship."

The President of the American Commission stated that the United States could make no distinction as to religion, and proposed the following article:

"RELIGION.

"ARTICLE.—The inhabitants of the territory over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."

The following article, proposed by the Spanish Commission, was read:

"THE MAINE.

"Draft of additional articles to the Treaty of Peace with the United States.

"MAINE—ARTICLE.—At the request of the Spanish Government, the two high contracting parties agree to appoint an international commission to be entrusted with investigating the causes of and responsibility for the Maine catastrophe, which occurred in the harbor of Havana on February 15, 1898. This international commission shall be composed of seven experts to be appointed as follows:

carriles en explotacion o en construccion en Cuba y Puerto Rico.

"Estos son los contratos que ahora se recuerdan, aunque no pueda decirse si hay otros relativos a obras y servicios publicos, ninguno de ellos de fecha reciente.

"1° de Diciembre de 1898."

El Presidente de la Comision americana declaro que los Comisarios americanos se veian obligados a rechazar estos articulos. Los Estados Unidos no se proponen repudiar ningun contrato, que al ser examinado se encuentre que obliga segun la ley internacional; pero clausulas parecidas a la que ahora se propone no se han insertado en tratados anteriormente celebrados por los Estados Unidos con Espana, Francia, Mexico, y Rusia por adquisicion de territorios; y podia admitirse que los Estados Unidos obraran con justicia y equidad en los contratos que los obliguen con arreglo a los principios del derecho internacional.

Se leyó el siguiente articulo, propuesto por la Comision española

"Religion.

"ARTICULO —.

"La religion catolica Apostolica Romana y sus instituciones y ministros continuaran gozando en todos los territorios que son objeto de este tratado, de la libertad y prerogativas en cuya posesion pacifica se hallan.

"Los fieles de esta Iglesia, cualquiera que sea su nacionalidad, continuaran asimismo gozando de la libertad que hoy tienen para la profesion de su religion y el ejercicio de su culto."

El Presidente de la Comision americana declara que los Estados Unidos no pueden hacer distincion entre las religiones, y propone el articulo siguiente:

"Religion.

"ARTICULO —.

"Los habitantes del territorio, cuya soberania Espana renuncia o cede, tendran asegurado el libre ejercicio de su religion."

Se leyó el siguiente articulo propuesto por la Comision española:

"El Maine.

"PROYECTO DE ARTICULOS ADICIONALES AL TRATADO DE PAZ CON LOS ESTADOS UNIDOS.

"Maine.

"A peticion del Gobierno español, las dos Altas Partes contratantes convienen en nombrar una comision internacional encargada de depurar las causas y responsabilidades de la catastrofe del Maine, ocurrida en el puerto de la Habana el 15 de Febrero de 1898. Esta Comision internacional se compondra de siete tecnicos nombrados de la manera siguiente:

"Three by the Spanish Government, one to be a Spanish subject, another a British subject and a third a French subject.

"Three by the United States Government, one to be a citizen of the United States, another a British subject and a third a French subject.

"The commission, to be presided over, with a deciding vote, by a German expert chosen by mutual agreement by the Spanish and American Governments.

"Should no agreement be reached hereon, the Spanish Government shall designate one person and the United States Government another, both persons to be experts and of German nationality, the choice for President to be decided by lot, and the drawing to take place at the Department of State at Washington.

The expenses of this Commission are to be borne in equal moieties by the two Governments, the Commission to meet in Havana at the earliest possible moment after the consent of the Governments of Germany, France and Great Britain is secured.

"In the event of the Spanish Government being found responsible, it shall pay to the United States its share of the expenses of the Commission. Further, a Spanish warship must go to New York and salute the flag of the United States.

"If, on the contrary, the Commission shall decide that Spain is not responsible, attributing the catastrophe to an accident inside the vessel or other fortuitous cause, the Government of the United States shall pay to Spain its share of the expenses of the Commission.

"Moreover, the President of the United States shall report the arbitral award to the Congress of the United States, setting forth in the official message the righteous course of the Spanish nation."

This article was rejected by the American Commissioners, who stated that they considered the case as closed.

The President of the Spanish Commission stated that he was unable to consider it as closed, since the President of the United States had referred to it in his message to Congress on Monday last.

The President of the American Commission stated that the American Commissioners had not received a copy of the message and therefore had not read it.

The President of the Spanish Commission replied that he had in his possession an extract from it, which he could produce.

The President of the American Commission answered that the American Commissioners did not care to continue the discussion of the subject on the present occasion.

The following article proposed by the Spanish Commissioners was read:

"Tres por el Gobierno español, cuyos nombramientos han de recaer precisamente, uno en un subdito español, otro en un subdito británico y el tercero en un subdito francés.

"Tres por el Gobierno norte americano, cuyos nombramientos habrán de recaer, uno en un ciudadano de los Estados Unidos, otro en un subdito británico y el tercero en un subdito francés.

"Pres'dira la Comisión con voto decisivo un técnico alemán, elegido de común acuerdo por los Gobiernos español y americano. Caso de no llegarse a un acuerdo, el Gobierno español designará un individuo y el norte americano otro, debiendo ser técnicos y de nacionalidad alemana, y en el Ministerio de Negocios Extranjeros de Washington se decidirá por suerte el que haya de ser Presidente.

"Los dos Gobiernos sufragaran por mitad los gastos de esta Comisión, que debiera reunirse en la Habana a la brevedad posible, previo el asentimiento de los Gobiernos de Alemania, Francia y Gran Bretaña.

"Caso de aparecer responsable el Gobierno español, tendrá que abonar la parte de gastos correspondientes por esta Comisión a los Estados Unidos. Además, un barco de guerra español tendrá que ir a Nueva York a saludar el pabellón de los Estados Unidos.

"Si, por el contrario, decidiera la Comisión la irresponsabilidad de España, atribuyendo la catastrophe a un accidente en el interior del buque, o caso fortuito, el Gobierno de los Estados Unidos tendrá que abonar la parte de gastos correspondiente por esta Comisión a España.

"Además, el Presidente de los Estados Unidos deberá dar cuenta de la sentencia arbitral a las Cámaras norte americanas, haciendo constar en el Mensaje Oficial la lealtad de proceder de la Nación española.

Este artículo fue rechazado por los Comisarios americanos, quienes declararon que consideraban terminado el asunto.

El Presidente de la Comisión española declaró que no podía considerarlo como terminado, desde que el Presidente de los Estados Unidos se había referido a él en su Mensaje al Congreso el lunes último.

El presidente de la Comisión americana declaró que los Comisarios americanos no habían recibido copia del Mensaje, y por lo tanto no lo habían leído.

El Presidente de la Comisión española contestó que tenía en su poder un extracto del mismo, que podía presentar.

El Presidente de la Comisión americana replicó que los Comisarios americanos no estaban dispuestos a continuar la discusión de este asunto en la ocasión presente.

Se leyó el siguiente artículo, propuesto por los Comisarios españoles.

"PENSION TO THE DUKE OF VERAGUA.

"ARTICLE.—The United States will continue paying to the descendants of the Great Discoverer of America, Christopher Columbus, the portion still payable of the pension they have been collecting since the time of their illustrious predecessor, as a proof of the gratitude of modern civilization, which Spain has been paying.

"This pension, since the royal order of November 11, 1829, has been reduced to the two sums following:

"Three thousand four hundred (hard) dollars annually, chargeable to the treasury of Porto Rico, and \$4,000 (like dollars) to the treasury of Manila.

"The United States and the said descendants by mutual agreement may fix the principal represented by these pensions and liquidate the latter by delivering over the principal thus agreed on, if deemed mutually advisable."

The American Commissioners stated that they rejected this article.

The following article, proposed by the Spanish Commissioners, was read:

"DEPOSITS AND BONDS."

"ARTICLE.—Moneys received by Government offices and establishments in the aforesaid territories from Spanish citizens in the way of deposits, consignments, loans and security of all kinds shall be returned to the lawful owners, whenever proper, either because of the expiration of the time for which they were made or because of the fulfillment of the principal obligations by them guaranteed. This restitution shall be made by the head of the office where the sums of money were deposited, consigned, loaned or given as security; and in default thereof by whoever is responsible for such sums under the law."

The American Commissioners stated that they rejected this article.

The following article, proposed by the Spanish Commissioners, was then read:

"CONSULS.

"ARTICLE.—Spain shall have the power to establish Consular officers in the parts and places of the territories, the sovereignty over which has been either relinquished or ceded by the present treaty."

This article the American Commissioners accepted.

The following article, proposed by the Spanish Commissioners, was then read:

"JURISDICTION OF COURTS.

"ARTICLE.—The Spaniards residing in the said territories shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country where in they reside, pursuant to the ordinary laws governing the same; and they shall

"Carga de justicia del Duque de Veragua.

"ARTICULO

"Los Estados Unidos continuaran satisfaciendo a los descendientes del Gran Descubridor de America, Cristobal Colon, la parte de pension todavia subsistente que han venido cobrando; desde los tiempos de su ilustre progenitor, como una prueba de gratitud de la civilizacion moderna, que venia satisfaciendo Espana.

"Esta pension viene reducida desde Real Orden de 11 de Noviembre de 1829, a las cantidades siguientes.

"3,400 (pesos fuertes) anuales consignada sobre el Tesoro de Puerto Rico, y \$4,000 (pesos fuertes) sobre el Tesoro de Manila.

"Los Estados Unidos y dichos descendientes de comun acuerdo podran capitalizar estas pensiones y extinguirlas por la entrega del capital que fijen, si asi respectivamente lo tuvieran por conveniente."

Los Comisarios americanos declaran que rechazan este articulo.

Se leyó el siguiente articulo, propuesto por los Comisarios espanoles:

"Depositos y fianzas.

"ARTICULO

"Seran devueltos los depositos, consignaciones, prestamos y fianzas de todas clases constituidas por ciudadanos espanoles en los establecimientos y oficinas del Estado, existentes en los territorios sobredichos, a sus legitimos dueños cuando fuere procedente su devolucion por haber vencido los plazos por que se hubiesen hecho o por haberse ya cumplido las obligaciones principales a que sirvieron de garantia. Esta devolucion se hara por el Jefe de la Oficina en que se hubieren entregado las cantidades depositadas, consignadas, prestadas o dadas en fianza, o en su defecto por quien de dicha devolucion deba responder con arreglo a las leyes."

Los Comisarios americanos declaran que rechazan este articulo.

Se leyó el siguiente articulo propuesto por los Comisarios espanoles:

"Agentes consulares.

"ARTICULO

"Espana podra establecer Agentes consulares en los puertos y plazas de los territorios cuyarenuncia y cesion es objeto de este tratado."

Los Comisarios americanos aceptan este articulo.

Se leyó el siguiente articulo, propuesto por los Comisarios espanoles:

"Jurisdiccion civil y criminal.

"ARTICULO

"Los espanoles residentes en los mencionados territorios estaran sometidos en lo civil y en lo criminal a los Tribunales del pais en que residan con arreglo a las leyes comunes que regulen su competencia, pudiendo comparecer ante los mismos en la

have the right to appear before said courts and to pursue the same course as citizens of the country to which the courts belong."

This article the American Commissioners accepted.

The following article, proposed by the Spanish Commissioners, was read:

"JURISDICTION OF COURTS.

"ARTICLE.—Civil and criminal actions and suits against the Government that may be pending at the time of the exchange of the ratifications of this treaty, to which the citizens of the countries the sovereignty over which has been relinquished or ceded are a party, and who, pursuant to such treaty, cease to be Spaniards, shall be tried and determined subject to the following rules:

"First—Judgments rendered either in civil or criminal matters before the date aforesaid, and with respect to which there is no recourse under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

"Second—Personal actions and cases against the Government which may be pending before the courts of the peninsula or the islands adjacent thereto, wherein a citizen of the said territories who by this treaty ceases to be a Spaniard is the plaintiff, shall, if the defendant is a Spaniard, continue to be tried in due form before the said courts to the rendition of the final judgment. Personal actions wherein the defendant is an inhabitant of the said territories which by this treaty cease to be Spanish, shall be tried by the competent court of the domicile of the defendant. Actions in rem or mixed actions, when the immovable property in litigation is situate in the Peninsula or adjacent islands, shall be pursued to final judgment and until the same is executed before the courts having cognizance thereof.

"Third—Criminal actions pending on said date before the Supreme Court of Spain against citizens of the territory relinquished and ceded, which ceases to be Spanish by this treaty, shall continue under its jurisdiction until final judgment; but this having been once rendered, the cases shall pass for execution to the jurisdiction of the competent court at the place where the same should be carried out."

The American Commissioners proposed, in place of the foregoing article, the following:

"JURISDICTION OF COURTS.

"ARTICLE.—Judicial proceedings pending at the time of the exchange of ratifications of this treaty in the territories over which Spain relinquished or cedes her sovereignty shall be determined according to the following rules:

misma forma y empleando los mismos procedimientos que deban observar los ciudadanos del país a que pertenezca el Tribunal."

Los Comisarios americanos aceptan este artículo.

Se leyó el siguiente artículo propuesto por los Comisarios españoles:

"Competencia de Tribunales.

"ARTICULO

"Los pleitos civiles y administrativos y las causas criminales pendientes al hacerse el canje de ratificaciones de este tratado, en que sean parte los ciudadanos residentes en los territorios renunciado y cedidos que con arreglo a aquel dejen de ser españoles concluyan de sustanciarse a tenor de las reglas siguientes:

"PRIMERA: Las sentencias dictadas antes de la fecha mencionada así en lo civil como en lo criminal, y contra las cuales no haya recursos que interponer con arreglo a la ley española, tendrán el carácter de ejecutorias y deberán ser cumplidas por los trámites legales por la Autoridad competente en el territorio en que proceda su cumplimiento.

"SEGUNDA: Los pleitos civiles por acción personal, y los administrativos, pendientes ante los Tribunales de la Península e Islas adyacentes, en que fuese demandante un ciudadano de dichos territorios, que por este tratado deje de ser español, continuaran sustanciándose por los Tribunales ante quienes pendiesen, hasta que recaiga sentencia ejecutoria, si fuese español el demandado. Los también por acción personal en que sea demandado un habitante de los sobredichos territorios que por este tratado pierda la nacionalidad española, pasaran al conocimiento del Juez o Tribunal del domicilio del demandado que fuese competente. Aquellos en que se ejercite una acción real mixta, si el inmueble que fuese su objeto radicase en la Península e Islas adyacentes, continuaran hasta que en ellos recaiga ejecutoria y esta sea cumplida ante los Tribunales que de ella estuvieran conociendo.

"TERCERA: Las causas criminales pendientes en la sobredicha fecha ante el Tribunal Supremo de España, contra los ciudadanos de los territorios renunciado y cedidos, que dejen de ser españoles por este tratado, continuaran sometidas a su jurisdicción hasta que recaiga sentencia, pero una vez que esta fuese dictada, pasaran para su cumplimiento a la jurisdicción en que aquella deba ser cumplida."

Los Comisarios americanos proponen que el anterior artículo se substituya por el siguiente:

"Jurisdicción de los Tribunales.

"ARTICULO

"Los procedimientos judiciales pendientes al canjearse las ratificaciones de este tratado, en los territorios sobre los cuales España renuncia o cede su soberanía, se determinaran con arreglo a reglas siguientes:

"1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

"2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending, or in the court that may be substituted therefor.

"3. Criminal actions pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose."

The following article, proposed by the Spanish Commissioners, was read:

"Copyrights and Patents.

"ARTICLE —.

"The rights of property secured by copyrights and patents acquired by Spaniards in the Islands of Cuba and Porto Rico, the Philippines, and all other territories ceded, at the time of the exchange of the ratification of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the said territories, shall continue to be admitted free of duty in the said territories for twenty-five (25) years, to be reckoned from the date of the exchange of the ratifications of this treaty, and the proprietary rights of their authors shall be protected for a like period."

The American Commissioners proposed as a substitute the following article:

"Copyrights and Patents.

"The rights of property, secured by copyrights and patents acquired by Spaniards in the Islands of Cuba and Porto Rico, the Philippines, and other ceded territories at the time of the exchange of the ratifications of this treaty, shall continue to be respected; Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of the ratification of this treaty."

The reading of the articles proposed by the Spanish Commissioners having been completed, the President of the American Commission stated that it was his understanding that the articles proposed by the

"1. Las sentencias dictadas en causas civiles entre particulares, o en una materia criminal, antes de la fecha mencionada, y contra las cuales no haya apelacion o derecho de revision, con arreglo a las leyes espanolas, se consideraran como firmes, y seran ejecutadas en debida forma por la Autoridad competente en el territorio dentro del cual dichas sentencias deban cumplirse.

"2. Los pleitos civiles entre particulares que en la fecha mencionada no hayan sido juzgados, continuaran su tramitacion ante el Tribunal en que se halle el proceso, o ante aquel que lo sustituya.

"3. Las acciones en materia criminal pendientes en la fecha mencionada ante el Tribunal Supremo de Espana contra ciudadanos del territorio que segun este tratado deja de ser espanol, continuaran bajo su jurisdiccion hasta que recaiga la sentencia definitiva; pero una vez dictada esa sentencia, su ejecucion sera encomendada a la Autoridad competente del lugar en que la accion se suscito."

Se leyó el siguiente artículo, propuesto por los Comisarios españoles:

"Propiedad literaria e industrial.

"ARTICULO

"Continuaran respetandose los derechos de propiedad literaria, artistica e industrial adquiridos por espanoles en las Islas de Cuba, Puerto Rico, Filipinas y demas territorios cedidos, al hacerse el canje de ratificaciones de este tratado. Las obras espanolas cientificas, literarias y artisticas, que no sean peligrosas para el orden publico en dichos territorios, continuaran entrando en los mismos con franquicia de todo derecho de aduana durante veinte y cinco (25) años, a contar desde el canje de ratificaciones de este tratado, y durante el mismo termino sera protegida la propiedad de sus autores."

Los Comisarios americanos propusieron que se sustituyese este artículo por el siguiente:

"Propiedad literaria e industrial.

"ARTICULO

"Los derechos de propiedad literaria e industrial reconocidos a los espanoles por medio de registros y patentes en las Islas de Cuba, Puerto Rico, Filipinas y otros territorios cedidos, al canjearse las ratificaciones de este tratado, continuaran siendo respetados. Las obras espanolas cientificas, literarias y artisticas, que no sean subversivas contra el orden publico en los territorios referidos continuaran siendo admitidas libres de derechos en los mismos, durante diez (10) años a contar desde el canje de las ratificaciones de este tratado."

Habiendose terminado la lectura de los artículos propuestos por los Comisarios españoles, el Presidente de la Comision americana declaro que entendia que los artículos propuestos por los Comisarios americanos serian aceptados o rechazados

American Commission would be accepted or rejected by the Spanish Commissioners at the next meeting.

The President of the Spanish Commission replied that the Spanish Commissioners would pursue the same course with respect to the American articles as the American Commissioners had pursued with reference to the Spanish articles.

On motion of the American Commissioners, the conference was adjourned till tomorrow, Wednesday, the 7th of December, without prejudice to the right of the Spanish Commissioners to request a postponement.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELOW REID.
JOHN B. MOORE.

por los Comisarios espanoles en la sesion proxima.

El Presidente de la Comision espanola contesto que los Comisarios espanoles seguiran respecto a los articulos americanos el mismo procedimiento que los Comisarios americanos habian seguido con referencia a los articulos espanoles.

A propuesta de los Comisarios americanos se levanto la sesion, acordando reunirse manana, miercoles 7 de Diciembre, sin perjuicio del derecho de los Comisarios espanoles para pedir un aplazamiento.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERRERO.
EMILIO DE OJEDA.

Protocol No. 21.

CONFERENCE

of December 8, 1898.

The session which was to have been held on yesterday having been postponed at the request of the Spanish Commissioners, the Joint Commission met to-day at two o'clock, p. m., there being

Present—

On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:

Messrs. MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO,

Mr. Ojeda was unable to be present, owing to illness, and Mr. Villa-Urrutia performed his duties as Secretary.

The protocol of the preceding session was read and approved.

The Spanish Commissioners proposed that the American Commissioners modify the clause presented by them and mentioned in the protocol of the last session relating to the limiting of the obligations of the United States in Cuba to the time of its occupation thereof.

The American Commissioners took this proposition under consideration and submitted to the conference a new wording of the clause, which was approved, and which is as follows:

"It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of their occupancy thereof; but they will, upon the termination of such occupancy, advise any Government established in the Island to assume the same obligations.

The Spanish Commissioners observed that although the American Commissioners had rejected at the last session the article presented by the Spanish Commissioners relating to the Maine, they considered it their duty to insist upon this question being submitted to arbitration.

The American Commissioners answered, referring to the observations made by them on this subject at the last session.

The Spanish Commissioners replied that since this new proposal for arbitration was also rejected, they would ask the American Commissioners to be pleased to propose some method of clearing up the matter of the Maine, and the responsibility growing out of it, so that the unjust prejudice against Spain shown in the United States

Protocolo No. 21.

CONFERENCIA

DEL 8 DE DICIEMBRE DE 1898.

Aplazada, a propuesta de los Comisarios españoles, la sesion que deblo haber tenido lugar el dia de ayer, se reunieron el dia de hoy a las dos de la tarde, hallandose.

Presentes—

Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:

los Senores MONTERO RIOS,
ABARZUA,
GARNICA,
VILLA-URRUTIA,
CERERO.

Por h larse enfermo no pudo asistir el Sr. Ojeda, e hiro sus veces como Secretario el Sr. Villa-Urrutia.

Fue leida y aprobada el acta de la sesion anterior.

Los Comisarios espanoles proponen que los de los Estados Unidos modifiquen la clausula por ellos presentada y que se menciona en el acta de la sesion ultima, relativa a la limitacion de las obligaciones de los Estados Unidos en Cuba al tiempo que dure su ocupacion.

Los Comisarios americanos toman en consideracion esta proposicion, y someten a la conferencia una redaccion de dicha clausula que es aceptado y dice asi:

"Queda entendido que en cualquiera obligacion aceptada en este tratado por los Estados Unidos con respecto a Cuba esta limitada al tiempo que dure su ocupacion en esta Isla, pero al terminar dicha ocupacion, aconsejaran al Gobierno que se establezca en la Isla, que acepte las mismas obligaciones."

Los Comisarios espanoles manifiestan que aunque la Comision americana habia rechazado en la sesion ultima el articulo presentado por la Comision espanola sobre el "Maine", consideraban, sin embargo, un deber insistir en que esta cuestion se sometiese a un arbitraje.

Los Comisarios americanos contestaron que se referian a las manifestaciones que hicieron en la sesion anterior.

Los Comisarios espanoles replican que, questo que esta nueva proposicion de arbitraje era tambien rechazada, se sirvieran los Senores Comisarios americanos proponer cualquier medio de esclarecer este asunto

by reason of an incomplete investigation might disappear, and the resentment of Spain, because the uprightness of her authorities or subjects, and the capacity of her administration to guarantee the safety in her ports of vessels of a nation with which she was at peace, had been placed in doubt, might also be blotted out.

The American Commissioners replied that they had no method to propose.

The President of the Spanish Commission, pursuant to the rules, presented a memorandum, which is hereto annexed, in support of the propositions rejected by the American Commissioners at the last session.

The American Interpreter proceeded to translate the memorandum and to read it in English.

The President of the American Commission reserved the right to reply in writing to the memorandum at the next session.

After explanations interchanged by the Presidents of the two Commissions, such articles presented by the Spanish Commissioners as were accepted or modified by the American Commissioners were approved.

The reading of the articles presented by the American Commission was then entered upon.

The articles were read, one by one, in the order in which they stood.

The first was as follows:

"ARTICLE.

"Spain hereby cedes to the United States the island variously known as Kusale, Ualan, or Strong Island, in the Carolines; and also concedes to the United States the right to land telegraph cables in the Canary Islands, or on any territory owned by Spain on the coast of Africa, or in the Peninsula.

"In consideration of what is set forth in this article, the United States will pay to Spain the sum of one million dollars (\$1,000,000) within three months from the exchange of the ratifications of the present treaty."

The President of the Spanish Commission declared that even in the event of an agreement being reached upon this article it would have to figure elsewhere than in the treaty, as it was foreign thereto; but that he was compelled to reject it, because the Spanish Government at this time neither entertained the idea of disposing of one of the Caroline Islands, nor could it do so for want of constitutional authority, previous authorization of the Cortes being necessary in the premises. Neither could what related to cable landings be accepted, because if stipulated in a treaty it might imply an easement on the national territory which the Spanish Government was not empowered to create, and because any American company might request through the executive channel, as other alien companies have done, such a concession, which was foreign to an international treaty.

del Maine, y las responsabilidades consiguientes de manera que pudiesen desaparecer las injustas prevenciones que se habían manifestado en los Estados Unidos contra España por causa de una información incompleta, y se borrara también el resentimiento de España por haberse puesto en duda la lealtad de sus Autoridades o de sus nacionales y la capacidad de su administración para garantizar por su parte la seguridad en sus puertos a los barcos de una Nación con quien estaba en paz.

Los Comisarios americanos contestaron que no tenían ningún medio que proponer.

El Presidente de la Comisión española, con arreglo al reglamento, presentó un Memorandum que va anejo al acta, en apoyo de las proposiciones rechazadas por la Comisión americana en la sesión última.

El Interpreté americano proció a la lectura en inglés de dicho Memorandum.

El Presidente de la Comisión americana se reserva el derecho de contestar por escrito a dicho Memorandum en la sesión próxima.

Después de las explicaciones que mediaron entre los Presidentes de ambas Comisiones quedó entendido que se aprobaban los artículos presentados por la Comisión española, tales como habían sido aceptados o modificados por la Comisión americana.

Procedióse entonces a la lectura de los artículos presentados por la Comisión americana.

Los artículos fueron leídos uno por uno, en el orden en que fueron presentados.

El 1° fue el siguiente:

"ARTICULO.

"España cede por el presente a los Estados Unidos la Isla diversamente llamada Kusale, Ualan a Strong Island e. las Carolinas; y además concede a los Estados Unidos el derecho de amarar cables telegráficos en las Islas Canarias o en cualquier territorio español de la costa de Africa, o en la Península.

"En consideración de lo establecido en este artículo, los Estados Unidos pagaran a España la suma de un millón de dólares (\$1,000,000), dentro de los tres meses del canje de ratificaciones del presente tratado."

El Presidente de la Comisión española declaró que aun en caso de que hubiera habido acuerdo sobre este artículo, tendría que figurar aparte del tratado, por ser ajeno al mismo; pero que se veía obligado a rechazarlo, por que ni entraba en el ánimo del Gobierno español, en este momento, el anagenar una de las Islas Carolinas ni podía tampoco hacerlo por carecer de facultades constitucionales necesitando para ello estar previamente autorizado por las Cortes. Tampoco podía aceptarse lo relativo al amarre de cables, por que estipulado en un tratado podría significar una servidumbre sobre territorio nacional, que el Gobierno español no estaba autorizado a

The following article was then read:

"ARTICLE.

"In conformity with the understanding established by an exchange of notes in the year 1886, Spain agrees that American missions and missionaries shall be allowed to resume and hereafter freely to carry on their work in the Caroline Islands that remain under Spanish sovereignty."

The President of the Spanish Commission observed that it was not known that any claim was pending in the premises, and that as the Constitution of the State laid down the rights of private individuals in religious matters, there was nothing in this regard to insert in the treaty.

The following article was then read:

"ARTICLE.

"The United States and Spain will reciprocally accord to the ships of each other, in their respective ports, most favored nation treatment, in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties.

"It is further agreed that the two Governments will enter into negotiations with a view to the conclusion of a commercial convention."

In place of the first paragraph, the American Commissioners now propose the following:

"Spain will in her ports accord to vessels of the United States the same treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as is accorded to Spanish vessels in the ports of the United States."

The President of the Spanish Commission objected to the second paragraph of the article as unnecessary; and suggested that the first paragraph be amended so that it should be reciprocal in its provisions and be limited as to its duration.

After discussion, the following article was drawn up:

"The Government of each country will, for the term of ten years accord to the merchant vessels of the other country the same treatment in respect of all port charges, including entrance dues, light dues and tonnage duties, as it accords to its own merchant vessels not engaged in the coastwise trade. This article may at any time be terminated on six months' notice given by either Government to the other."

The following article was then read:

"ARTICLE.

"The following treaty stipulations heretofore entered into by the United States and Spain shall be held to continue in force:

"Treaty of October 27, 1795, so far as it is confirmed by Article XII. of the Treaty of February 22, 1819;

"Treaty of February 22, 1819, so far as its provisions have not been executed or become obsolete;

"Convention of February 17, 1834, for the

constituir, y porque cualquiera Compania americana podria solicitar por la via administrativa y como lo han hecho otras Companias extranjeras, una concesion, agena a un tratado internacional.

Se leyó luego el artículo siguiente:

"ARTICULO.

"De conformidad con el acuerdo establecido por un canje de notas en el año 1886 España conviene en que las misiones americanas y los Misioneros podran reanudar y de que llevar libremente a efecto sus trabajos en las Islas Carolinas que quedan bajo la soberania de España."

El Presidente de la Comisión española manifiesta que no consta este pendiente ninguna reclamación sobre el particular, y que como la constitución del Estado marca los derechos de los particulares en materias religiosas nada hay que insertar a este respecto en el tratado.

Se leyó luego el artículo siguiente:

"ARTICULO.

"Los Estados Unidos y España concederán recíprocamente a los buques de cada uno de ellos en sus respectivos puertos, el trato de la nación mas favorecida respecto a todos los derechos de puerto, incluyendo los de entrada y salida, faros y tonelaje.

"Se conviene además en que los dos Gobiernos emperaran las negociaciones para concluir un convenio comercial."

En lugar del primer párrafo, proponen ahora los Comisarios americanos el siguiente:

"España concedera en sus puertos a los buques de los Estados Unidos el mismo trato con respecto a todos los derechos de puerto, incluyendo derechos de entrada y salida, de faro y tonelaje, que se concede a los buques españoles en los puertos de los Estados Unidos."

El Presidente de la Comisión española manifestó que el segundo párrafo del artículo era innecesario y pidió que se modificase el primer párrafo de manera que fuese reciproca la estipulación y limitado el tiempo de su duración.

Después de discutido se aprobó el artículo en la forma siguiente:

"El Gobierno de cada país conceda por el término de diez años, a los buques mercantes del otro, el mismo trato en cuanto a todos los derechos de puerto, incluyendo los de entrada y salida, de faro y tonelaje, que concede a sus propios buques mercantes no empleados en el comercio de cabotaje. Este artículo puede ser denunciado en cualquier tiempo dando noticia previa de ello cualquiera de ellos cualquiera de los dos Gobiernos al otro con seis meses de anticipación."

Se leyó luego el artículo siguiente:

"ARTICULO.

"Los siguientes tratados, antes celebrados entre los Estados Unidos y España, continuaran en vigor:

settlement of claims;

"Agreement of February 17, 1834, for the settlement of claims;

"Agreement of February 11-12, 1871, for the settlement of claims, Article VII;

"Convention of January 5, 1877, and the supplementary convention of August 7, 1882, for the extradition of criminals;

"Protocol of January 7, 1877, concerning Judicial procedure;

"Convention of June 19, 1882, concerning Trade Marks; and the agreement between the two countries in relation to international copyright."

The President of the Spanish Commission stated that the Spanish Commissioners were unable to accept this article. Some of the treaties to which it referred were obsolete or related to conditions which no longer existed, while others should be modified, and it would involve a more extended examination than the Joint Commission was in a position to give. But this did not imply that the two Governments might not take up the subject themselves.

The American Commissioners inquired whether the objection of the President of the Spanish Commission applied to the extradition treaties.

The President of the Spanish Commission replied that it did, as those treaties needed revision.

The American Commissioners urged the revival of the extradition treaties, the convention concerning trade marks, and the agreement in relation to international copyright; and proposed that, in view of the immediate importance of the subjects to which they related, they should, if the Spanish Commissioners were not prepared to revive them fully, be revived temporarily as a *modus vivendi*, for a period of a year or even for six months, so as to enable the two Governments to consider the question of their renewal.

The President of the Spanish Commission adhered to the views which he had expressed; and the article was rejected.

The following article was then read:

"ARTICLE

"The present treaty shall be ratified by the President of the United States by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen Regent of Spain; and the ratifications shall be exchanged at Washington within six months from the date hereof, or earlier if possible.

"In faith whereof we, the respective plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

"Done in duplicate at Paris, the — day of — in the year of Our Lord one thousand eight hundred and ninety-eight."

This article was accepted.

The conference was then adjourned, with the understanding that the Joint Commission should reassemble for the purpose of signing the treaty, whenever it should be

"Tratado de 27 Octubre de 1795, en su parte confirmada por el artículo XII del Tratado de 22 de Febrero de 1819.

"Tratado de 22 de Febrero de 1819, en su disposiciones que no han sido ejecutadas o que no han caído en desuso."

"Convenio de 17 de Febrero de 1834 para el arreglo de reclamaciones.

"Acuerdo de 11-12 de Febrero de 1871, para el arreglo de reclamaciones (Artículo VII.)

"Convenio de 5 de Enero de 1877, y convenio supletorio de 7 de Agosto de 1882, para la extradición de criminales.

"Protocolo de 7 Enero de 1877 sobre procedimientos judiciales.

"Convenio de 19 de Junio de 1882 respecto a las marcas de fabrica: y el acuerdo entre los dos paises, con relacion a la propiedad literaria internacional."

Manifiesto el Presidente de la Comision espanola que no podia aceptar dicho articulo, por que algunos de tratados a que el mismo se referia estaban ya en desuso o se referian a condiciones que ya no existian, por lo cual era preciso hacer un estudio de cada uno de ellos mas detenido que el que podia hacer esta Comision. Pero que esto no significaba que ambos Gobiernos no pudieran entenderse directamente sobre este asunto.

Los Comisarios americanos preguntaron si las observaciones del Presidente de la Comision espanola se aplicaban a los tratados de extradicion.

El Presidente de la Comision espanola respondio que si, por que estos tratados necesitaban ser corregidos.

Los Comisarios americanos pidieron la renovacion de los tratados de extradicion, marcas de fabrica y propiedad literaria, y propusieron que en vista de la importancia inmediata de los asuntos a que se referian, fuesen renovado temporalmente, como un *modus vivendi*, por un plazo de un ano o de seis meses, si los Comisarios espanoles veian inconveniente en su renovacion absoluta, a fin de permitir a ambos Gobiernos el estudiar la cuestion de su renovacion.

El Presidente de la Comision espanola mantuvo su anterior opinion y el articulo fue rechazado.

Se leyó luego el artículo siguiente:

"ARTICULO.

"El presente Tratado sera ratificado por Su Majestad la Reina Regente de Espana y por el Presidente de los Estados Unidos de acuerdo y con la aprobacion del Senado; y las ratificaciones se cangearan en Washington dentro del plazo de seis meses desde esta fecha, o antes si posible fuese. En fe de lo cual, los respectivos Plenipotenciarios firman y sellan este Tratado. Hecho por duplicado en paris a 10 de Diciembre del ano mil ochocientos noventa y ocho."

Se aprobo este articulo.

Se levanto la sesion en la Inteligencia de que la Comision en pleno se reuniria con

ready for signature; and that, in the mean time, each Commission might communicate to the other any memoranda which it should desire to file under the rules.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

objeto de firmar el tratado, cuando estuviese en disposicion de ser firmado, y que entre tanto ambas Comisiones podrian comunicarse cualquier Memorandum que con arreglo al reglamento desearan presentar.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

MEMORANDUM.

La Comision espanola propuso a la Americana el Proyecto de varios articulos, para el tratado de paz, que esta rechaza.

Se niega a reconocer a los habitantes de los paises cedidos y renunciados por Espana, el derecho de optar por la cudadania de que hasta ahora gozaron. I sin embargo, este derecho de opcion, que es uno de los mas sagrados de la personalidad humana, ha sido constantemente respetado desde que se emancipo el hombre de la seridumbre de la tierra, rindiendose a este sagrado derecho tributo en los tratados que sobre cesion territorial se celebraron en el mundo moderno.

Se niegan a estipular el respeto que merecen los contratos celebrados por un Soberano legitimo, para obras y servicios publicos, contratos que afectan substancialmente a la propiedad privada de particulares, y que fueron respetados en el Tratado de Campo-Formio de 1797, en el de Paris de 1814, en el de Zurich de 1859, en el de Paris de 1860, en los de Viena de 1864 y 1866, y que respeto tambien Alemania al terminar su guerra con la Francia, por el tratado de Francfort de 1871.

La Comision americana alega como unica razon para no estipular este respeto, el que los Estados Unidos en sustrados nunca lo han reconocido. Como si los Estados Unidos fueran la unica Potencia poseedora del criterio de justicia que debe inspirar las convenciones y los actos de las Naciones.

Si niegan a que sean devueltos a sus legitimos y particulares dueños por quienes, sean funcionarios espanoles o Americanos, esten obligados segun justicia a esta devolucion, las cantidades que hubiesen entregado en las cajas publicas de los territorios que dejan de pertenecer a Espana, en concepto de consignaciones, depositos a fianzas de contratos u obligaciones, despues que estos hayan sido cumplidos, y la fianza por lo tanto, deba ser cancelada. I, sin embargo, a esta devolucion se rindio homenaje por Belgica, los Países-Bajos, Austria, Francia, Cerdena, Dinamarca, Prusia, Italia y Alemania, en los tratados que entre si celebraron en 1839, 1859, 1864, 1866 y 1871.

Se niegan a reconocer el caracter permanente de las obligaciones que por este tratado contraen los Estados Unidos respecto a cosas y personas en Cuba, limitando su duracion al tiempo de la ocupacion militar de la Grande Antilla por las tropas americanas, sin tener presente que las obligaciones correlativas que Espana contrae, exige la Comision americana que sean permanentes, y que por consiguiente, queda de esa manera violada la justicia al violarse el principio de reciprocidad que informa siempre los derechos y las obligaciones de las partes contratantes.

La Comision americana se presta en la sesion de hoy a que los Estados Unidos aconsejen la observancia de este tratado al Gobierno independiente de Cuba mando llegue a constituirse. La Comision espanola vista esta manifestacion, atempera cuanto acaba de decir sobre este punto, hasta que quede en armonia con las manifestaciones en esta sesion de la Comision americana.

Nadie tiene que decir la Comision espanola sobre la negativa de la Americana, a tomar a cargo de los Estados Unidos la pension de gratitud que Espana viene pagando a los descendientes del inmortal descubridor de America. Espana se reserva este asunto para resolverlo como entienda mas conforme a la justicia, sin olvidar las causas de la civilizacion moderna de la misma America.

Espana ha podido sacrificar y sacrifica sus intereses todos coloniales en el altar de la paz y para evitar la renovacion de una guerra que es evidente que no puede sostener con una Nacion incomparablemente mas poderosa y de mayores recursos. Ha sostenido sus derechos en estas Conferencias con toda la energia que correspondia a la rectitud de su conciencia. Cuando a su Comision le fue impuesta como ultimatum la proposicion con que concluye el Memorandum americano presentado en la sesion de 21 de Noviembre ultimo, sin abandonar su derecho y solo por via de transaccion, inspirandose en su amor a la paz, hizo proposiciones en que sus intereses eran sacrificados; los Estados Unidos los rechazaron todas.

Sobre las dos importantes cuestiones de derecho, dependientes de la Interpretacion que se diera al Protocolo de Washington, propuso a la Comision americana el arbitraje. Fue tambien rechazada.

Al ultimatum que acaba de citarse de 21 de Noviembre, sucede el que en la ultima sesion va envuelto en los articulos que propone la Comision americana. La Espanola que cumpliendo las instrucciones de su Gobierno se sometio al primero, se sometara tambien a este.

Se conforma pues con que los Estados Unidos incluyan en el tratado los articulos e que este memorandum se refiere.

Pero la Comision Americana rechaza tambien otro, que es para Espana, si cabe, de mayor importancia que los demas articulos que la Espanola habia propuesto; porque a diferencia de estos, aquel afecta a su propia dignidad. La catastrofe del Maine di ocasion en los Estados Unidos a que una parte muy caracterizada y senalada de su prensa cubriese de ultrages el honor inmaculable del pueblo Espanol.

Parecia que el tiempo iba haciendo su obra de templanza de las pasiones y de olvido de los agravios cuando la Comision americana en su citado Memorandum de 21 de Noviembre ultimo, renovo tan lamentable incidente, acusando de descuido e incapacidad a Espana para garantir en sus puertos la seguridad de los buques de una Nacion amiga. El derecho mas sagrado que a Espana no podria dejarle reconocerse por que se le reconoce al mas desgraciado de los seres humanos en la tierra, ere el de defenderse de una imputacion que en tan tristes condiciones la dejaba ante las demas Naciones. Por esto presento su Comision el 1 de este mes los articulos proponiendo el nombramiento de una Comision tectica Internacional, nombrada con todas las garantias imaginables para asegurar su imparcialidad, fin de que procediese a investigar las causas de la catastrofe y si en ella cabia, siquiera fuera por negligencia, alguna responsabilidad a Espana.

Cuando esta proposicion estaba sometida a la Comision americana, el Presidente de los Estados Unidos, en su Message de 5 del mismo mes, dirigido a las Camaras americanas, volvio a ocuparse de un asunto que no podia menos de vernover las pasiones de los dos pueblos, entre quienes sus Comisarios estaban elaborando el restablecimiento de la paz Califico la catastrofe de sospechosa, afirmo que su causa habia sido externa y anadio que solamente por falta de una prueba positiva la Comision americana que habia informado sobre ella habia dejado de consignar a quien correspondia la responsabilidad de dicha accion.

Como era posible imaginar que el siguiente dia de pronunciadas estas frases en Washington, la Comision americana en Paris habia de negar a Espana aquel sagrado derecho de defensa en cuyo respeto redamaba?

No puede pues la Comision espanola resignarse a tal negativa, y consigna solennemente su protesta contra ella, haciendo constar que en lo futuro no sera llicito jauras a los que se oponen a que se depuren las causas de aquella horrible catastrofe, imputar abierta a emboradamente responsabilidad de ningun genero, por ella, a la noble Nacion espanola y a sus Autoridades. Esta conforme:

EMILIO DE OJEDA.

TRANSLATION.

(ANNEX TO PROTOCOL NO. 21.)

MEMORANDUM.

The Spanish Commission proposed to the American Commission the draft of several articles for the treaty of peace, which the latter has rejected.

The American Commission refuses to acknowledge the right of the inhabitants of the countries ceded or relinquished by Spain to choose the citizenship with which up to the present they have been clothed. And nevertheless this right of choosing, which is one of the most sacred rights of human beings, has been constantly respected since the day in which man was emancipated from serfdom. This sacred right has been respected in treaties of territorial cession concluded in modern times.

It refuses also to stipulate anything in relation to the respect due the contracts entered into by a legitimate sovereign for public works and services. — contracts which materially affect the rights of property of private individuals, which were respected in the treaties of Campo Formio of 1797, of Paris of 1814, of Zurich of 1859, of Paris of 1860, of Vienna of 1864 and 1866, and which Germany respected also when ending the war with France by the treaty of Frankfort of 1871. The American Commission alleged as its only reason for this refusal that the United States in its treaties has never recognized these contracts, as though the United States were the only power controlling the standard of justice which must govern the conventions and the acts of nations.

It refuses to provide for the restitution to their lawful and private owners by whoever, be he a Spanish or an American official, is bound rightfully to do it, of the sums of money they may have paid into the public treasuries of the territory which ceases to belong to Spain, in the way of consignments, deposits, or security for contracts or obligations, after they have been executed or performed, and which security should be returned. And nevertheless homage was paid to such return by Belgium, Netherlands, Austria, France, Sardinia, Denmark, Prussia, Italy and Germany in the treaties concluded between them in 1839, 1859, 1864, 1866 and 1871.

The American Commission refuses to recognize the permanent character of the obligations contracted by the United States in this treaty with respect to persons and things in Cuba, limiting the duration thereof to the time of the military occupation of the Greater Antilles by the American troops, without bearing in mind that the American Commission demands that the corresponding obligations contracted by Spain shall be permanent, and that justice is thus violated in attacking the principle of reciprocity which always governs the rights and obligations of contracting parties.

In to-day's session (December 8), the American Commission consents to the United States advising the independent government of Cuba whenever it shall be constituted, to observe this treaty. In view of this statement, the Spanish Commission moderates what it has just said upon this point in so far as it is necessary to make it harmonize with the statements of the American Commission made in this session.

The Spanish Commission has nothing to say to the refusal of the American Commission to assume for the United States the pension of gratitude which Spain has been paying to the descendants of the immortal discoverer of America. Spain reserves this matter to settle it as she understands shall best befit justice, without forgetting the cause of modern civilization and America itself.

Spain has been able to sacrifice, and does sacrifice, all her colonial interests upon the altar of peace, and in order to prevent the renewal of a war which it is evident she cannot sustain with a nation incomparably more powerful and with greater resources.

She has upheld her rights in these conferences with all the energy the rectitude of her conscience demanded. When there was imposed upon her Commission as an ultimatum the proposition which closes the American memorandum presented at the session of November 21 last, without waiving its rights, and solely by way of compromise, inspired by its love for peace, it made propositions wherein her interests were sacrificed. The United States rejected them all.

Upon the two important questions of law, depending upon the interpretation to be given the Protocol of Washington, it proposed arbitration to the American Commission. This proposition was also rejected.

The ultimatum of November 24, which has just been cited, is succeeded by that which at the last session is involved in the articles the American Commission proposes. The Spanish Commission which, complying with the instructions of its Government, submitted to the first, will also bow to this.

It assents, then, to the United States including in the treaty the articles to which this memorandum refers.

But the American Commission also rejects another article which is to Spain, if possible, of greater importance than the other articles the Spanish Commission had proposed; because, differing from these, the former affects her own dignity. The Maine disaster gave occasion for a very respectable and prominent part of the press in the United States to cover with insults the unstainable honor of the Spanish people. It seemed that time was doing its work of tempering passions and casting into oblivion the wrongs when the American Commission, in its said memorandum of November 21, again brought up so lamentable an incident, accusing Spain of negligence and incapacity to guarantee security to vessels of a friendly nation in her ports. The most sacred right, which could not fail to be recognized as attaching to Spain, as it is vouchsafed to the most wretched of human beings, was that of defending herself from an imputation which left her in so sorry a plight before the other nations. For this reason her Commission, on the first of this month, presented the articles proposing the appointment of an International Expert Commission, to be named with all imaginable guarantees to assure its impartiality, in order that it might proceed to investigate the cause of the disaster, and whether any responsibility were attachable to Spain, even were it through negligence.

When this proposition was under submission to the American Commission, the President of the United States, in his message to the American Congress of the 5th of the said month, again took up a subject which could not but rekindle the passions of the two peoples whose Commissioners were working over the restoration of peace. He characterized the disaster as suspicious; he affirmed that its cause was external; and added that only for want of positive proof the American Board of Inquiry which had reported thereon had failed to fix the responsibility for the act on any one.

How could it be imagined that on the day following that upon which these words were pronounced in Washington the American Commissioners in Paris could refuse to Spain that sacred right of defence the respecting of which she demanded?

The Spanish Commission, therefore, cannot yield to such a refusal, and solemnly records its protest against it, setting forth that in the future it shall never be lawful for those who oppose the investigating of the cause of that horrible disaster, to impute, openly or covertly, responsibility of any kind therefor to the noble Spanish nation, or its authorities. True copy,

EMILIO DE OJEDA.

Protocol No. 22.

CONFERENCE

of December 10, 1898.

Present—
On the part of the United States:

Messrs. DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

On the part of Spain:
Messrs. MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

The protocol of the preceding session was read and approved.

The American Commissioners presented a written reply to the memorandum of the Spanish Commissioners read at the last session. The reply is hereto annexed. (Annex No. 1.)

The Treaty of Peace (Annex No. 2.) was read and approved, and was signed by the Plenipotentiaries of the two High Contracting Parties.

The President of the Spanish Commission expressed his thanks to the American Commissioners for the kind phrases with which their last memorandum concluded. He had much pleasure in acknowledging also the courtesy and consideration which had been shown by them in their personal intercourse during the continuance of the negotiations, which, however painful to the Spanish Commission, would leave with them the personal remembrance of the attentions which had been bestowed upon them by the worthy members of the American Commission.

The President of the American Commission replied that the words to which the President of the Spanish Commission referred were but the spontaneous expression of the true feelings of the American Commissioners toward the Spanish Commissioners, for whom they entertained sentiments of the highest esteem and regard.

The protocol of this session was read and approved, and the Joint Commission ended its labors.

Signed: WILLIAM R. DAY.
CUSHMAN K. DAVIS.
WM. P. FRYE.
GEO. GRAY.
WHITELAW REID.
JOHN B. MOORE.

Protocolo No. 22.

CONFERENCIA

Del 10 De Diciembre De 1898.

Presentes—
Por parte de los Estados Unidos de America:

los Senores DAY,
DAVIS,
FRYE,
GRAY,
REID,
MOORE,
FERGUSON.

Por parte de Espana:
los Senores MONTERO RIOS,
ABARZUZA,
GARNICA,
VILLA-URRUTIA,
CERERO,
OJEDA.

Fue leida y aprobada el acta de la sesion anterior.

Los Comisarios americanos presentaron su contestacion escrita al memorandum de los Comisarios espanoles leido en la sesion ultima, que va anejo al protocolo (anejo Num. 1.).

Se leyó y aprobó el tratado de paz (anejo Num. 2), y se procedió a su firma por los Plenipotenciarios de las Altas Partes contratantes.

El Señor Presidente de la Comisión española manifiesta su agradecimiento a los Comisarios americanos, por las atentas frases con que terminaron su último memorandum, y se complace en reconocer asimismo la cortesía y la prudencia que en sus relaciones personales han demostrado durante el curso de una negociación que aunque dolorosa para los Comisarios españoles dejaba en ellos el recuerdo personal de las atenciones que han merecido a los dignos miembros de la Comisión americana.

El Presidente de la Comisión americana contesto que las palabras a que aludio el Presidente de la Comisión española eran la espontanea expresion de los verdaderos sentimientos de los Comisarios americanos hacia los Comisarios espanoles, por quienes tenian la mayor estimacion y aprecio.

Se leyó y aprobó el protocolo de esta sesion, acabando sus trabajos la Comisión en pleno.

Firmado: E. MONTERO RIOS.
B. DE ABARZUZA.
J. DE GARNICA.
W. R. DE VILLA-URRUTIA.
RAFAEL CERERO.
EMILIO DE OJEDA.

Annex 1 to Protocol No. 22.

MEMORANDUM

OF THE AMERICAN COMMISSIONERS IN REPLY TO THAT OF THE SPANISH COMMISSIONERS SUBMITTED AT THE MEETING OF DECEMBER 8, 1898.

In the memorandum submitted at the last meeting by the Spanish Commissioners, the statement is broadly made, "The American Commission refuses to acknowledge the right of the inhabitants of the countries ceded or relinquished by Spain to choose citizenship with which up to the present time they have been clothed."

The American Commissioners do not so understand the article upon the subject of citizenship submitted by them as a substitute for the article proposed by the Spanish Commissioners. An analysis of this article will show that Spanish subjects, natives of Spain, are allowed a year's time in which, by the simple process of stating in a court of record their intention so to do, they may preserve their allegiance to Spain.

Such persons have the fullest right to dispose of their property and remove from the territory, or remaining to continue to be Spanish subjects or elect the nationality of the new territory.

As to natives, their status and civil rights are left to Congress, which will enact the governing power to control these important relations to the new government. The Congress of a country which never has enacted laws to oppress or abridge the rights of residents within its domain, and whose laws permit the largest liberty consistent with the preservation of order and the protection of property may safely be trusted not to depart from its well settled practice in dealing with the inhabitants of these islands.

It is true that the Spanish Commissioners proposed an article upon the subject of nationality supplementing the one offered by them as to nationality of Spanish nationality within one year after the exchange of ratifications of the treaty. This would permit all the uncivilized tribes which have not come under the jurisdiction of Spain, as well as foreign residents of the islands, to elect to create for themselves a nationality other than the one in control of the territory, while enjoying the benefits and protection of the laws of the local sovereignty. This would create an anomalous condition of affairs leading to complications and discord important to avoid.

The American Commission felt constrained to reject the articles tendered by the Spanish Commissioners in respect to contracts entered into for public works and services. It took this step because the nature, extent and binding obligation of these contracts are unknown to the American Commissioners, and they again disclaim any purpose of their Government to disregard the obligations of international law in respect to such contracts as investigation may show to be valid and binding upon the United States as successor in sovereignty in the ceded territory.

The American Commissioners also rejected the article proposed by the Spanish Commissioners upon the subject of "Deposits and Bonds." In the form tendered, the American Commissioners understood this article to obligate the United States to return moneys "received by Government Offices and Establishments from Spanish citizens" for the purposes specified, although the same never came into the possession of the authorities of the United States in said territories. Nothing can be further from the intention of the Government than to keep from the lawful owners such sums as come under its control which should be restored after the fulfilment of contracts or obligations intended to be secured thereby. Certainly the United States have no intention to indulge in such confiscation of property which becomes subject to its control, and may safely rely in such matters upon the confidence warranted by its consistent record.

Respecting the observation in the memorandum of the Spanish Commission upon the last message of the President of the United States, wherein he refers to the disaster of the battleship Maine, the American Commissioners feel obliged to decline to enter upon any discussion of the same, in obedience to well established precedents and practice in the history of their country.

The American Commissioners cannot close this final memorandum without expressing their sense of the thoroughness, learning, and devoted ability, no less than the uniform courtesy with which the Spanish Commissioners have conducted the negotiations about to terminate.

True copy:

JOHN B. MOORE.

Annex 2 to Protocol No. 22.

THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN REGENT OF SPAIN, IN THE NAME OF HER AUGUST SON DON ALFONSO XIII., desiring to end the state of war now existing between the two countries, have for that purpose appointed as Plenipotentiaries:

THE PRESIDENT OF THE UNITED STATES,

William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

AND HER MAJESTY THE QUEEN REGENT OF SPAIN,

Don Eugenio Montero Rios, President of the Senate; Don Buenaventura de Abarzuza, Senator of the Kingdom and ex-Minister of the Crown; Don Jose de Garnica, Deputy of the Cortes and Associate Justice of the Supreme Court; Don Wenceslao Ramirez de Villa-Urrutia, Envoy Extraordinary and Minister Plenipotentiary at Brussels; and Do. Rafael Cerero, General of Division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ART. II.

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

ART. III.

Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich,

LOS ESTADOS UNIDOS DE AMERICA Y S. M. LA REINA REGENTE DE ESPANA, EN NOMBRE DE SU AUGUSTO HIJO DON ALFONSO XIII., deseando poner termino al estado de guerra hoy existente entre ambas Naciones, han nombrado con este objeto por sus Plenipotenciarios, a saber:

EL PRESIDENTE DE LOS ESTADOS UNIDOS DE AMERICA A

William R. Day, Cushman K. Davis, William P. Frye, Georges Gray, y Whitelaw Reid, ciudadanos de los Estados Unidos:

Y SU MAJESTAD LA REINA REGENTE DE ESPANA A

Don Eugenio Montero Rios, Presidente del Senado; Don Buenaventura de Abarzuza, Senador del Reino, Ministro que ha sido de la Corona; Don Jose de Garnica, Diputado a Cortes, Magistrado del Tribunal supremo; Don Wenceslao Ramirez de Villa-Urrutia, Enviado Extraordinario y Ministro plenipotenciario en Bruselas; y Don Rafael Cerero, General de division;

Los cuales reunidos en Paris, despues de haberse comunicado sus plenos poderes que fueron hallados en buena y debida forma, y previa la discusion de las materias pendientes, han convenido en los siguientes articulos:

ARTICULO I.

Espana renuncia todo derecho de soberania y propiedad sobre Cuba.

En atencion a que dicha isla, cuando sea evacuada por Espana, va a ser ocupada por los Estados Unidos, los Estados Unidos mientras dure su ocupacion, tomara n sobre si y cumpliran las obligaciones que por el hecho de ocuparla, les impone el Derecho internacional, para la proteccion de vidas y haciendas.

ARTICULO II.

Espana cede a los Estados Unidos la Isla de Puerto Rico y las demas que es tan ahora bajo su soberania en las Indias occidentales, y la Isla de Guam en el Archipielago de las Marianas o Ladrones.

ARTICULO III.

Espana cede a los Estados Unidos el archipielago conocido por Islas Filipinas, que comprende las islas situadas dentro de las lineas siguientes:

Una linea que corre de Oeste a Este, cerca del 20° paralelo de latitud Norte, a traves de la mitad del canal navegable de Bachi, desde el 118° al 127° grados de longitud Este de Greenwich; de aqua a lo largo del ciento veintisiete (127) grado meridiano de longitud Este de Greenwich al paralelo cuatro grados cuarenta y cinco minutos (4°

seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty-five minutes (4 deg. 45m.) north latitude, thence along the parallel of four degrees and forty-five minutes (4 deg. 45 m.) north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty-five minutes (119 deg. 35 m.) east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty-five minutes (119 deg. 35 m.) east of Greenwich, to the parallel of latitude seven degrees and forty minutes (7 deg. 40 m.) north, thence along the parallel of latitude seven degrees and forty minutes (7 deg. 40 m.) north of its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars (\$20,000,000), within three months after the exchange of the ratifications of the present treaty.

ART. IV.

The United States will, for the term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States.

ART. V.

The United States will, upon the signature of the present treaty, send back to Spain, at its own cost, the Spanish soldiers taken as prisoners of war on the capture of Manila by the American forces. The arms of the soldiers in question shall be restored to them.

Spain will, upon the exchange of the ratifications of the present treaty, proceed to evacuate the Philippines, as well as the island of Guam, on terms similar to those agreed upon by the Commissioners appointed to arrange for the evacuation of Porto Rico and other islands in the West Indies, under the Protocol of August 12, 1898, which is to continue in force till its provisions are completely executed.

The time within which the evacuation of the Philippine Islands and Guam shall be completed shall be fixed by the two Governments. Stands of colors, uncaptured war vessels, small arms, guns of all calibres, with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds, belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain. Pieces of heavy ord-

45') de latitud Norte; de aqua siguiendo el paralelo de cuatro grados cuarenta y cinco minutos de latitud Norte (4° 45') hasta su interseccion con el meridiano de longitud ciento diez y nueve grados y treinta y cinco minutos (119° 35') Este de Greenwich, de aqui siguiendo el meridiano de longitud ciento diez y nueve grados y treinta y cinco minutos (119° 35') Este de Greenwich, al paralelo de latitud siete grados cuarenta minutos (7° 40') Norte, de aqui siguiendo el paralelo de latitud siete grados cuarenta minutos (7° 40') Norte a su interseccion con el ciento diez y seis (116°) grado meridiano de longitud Este de Greenwich, de aqui por una linea recta, a la interseccion del decimo grado paralelo de latitud Norte, con el ciento diez y ocho (118°) grado meridiano de longitud Este de Greenwich, y de aqui siguiendo el ciento diez y ocho grado (118°) meridiano de longitud Este de Greenwich al punto en que comienza esta demarcacion.

Los Estados Unidos pagaran a Espana la suma de veinte millones de dollars (\$20,000,000) dentro de tres meses despues del canje de ratificaciones del presente tratado.

ARTICULO IV.

Los Estados Unidos durante el termino de diez anos a contar desde el canje de la ratificacion del presente tratado, admitiran en los puertos de las Islas Filipinas los buques y las mercancías espanoles, bajo las mismas condiciones que los buques y las mercancías de los Estados Unidos.

ARTICULO V.

Los Estados Unidos al ser firmado el presente tratado, trasportaran a Espana a su costa los soldados espanoles que hicieron prisioneros de guerra las fuerzas americanas al ser capturada Manila. Las armas de estos soldados les seran devueltas.

Espana al canjearse las ratificaciones del presente tratado, procedera a evacuar las Islas Filipinas, asi como la de Guam, en condiciones semejantes a las acordadas por las Comisiones nombradas para concertar la evacuacion de Puerto Rico y otras Islas en las Antillas Occidentales, segun el Protocolo de 12 de Agosto de 1898, que continuara en vigor hasta que sean completamente cumplidas sus disposiciones.

El termino dentro del cual sera completada la evacuacion de las Islas Filipinas y la de Guam, sera fijado por ambos Gobiernos. Seran propiedad de Espana banderas y estandartes, buques de guerra no apresados, armas portatiles, canones de todos calibres con sus montajes y accesorios, polvoras, municiones, ganado, material y efectos de toda clase pertenecientes a los ejércitos de mar y tierra de Espana en las Filipinas y Guam. Las piezas de grueso calibre, que no sean artilleria de campana,

nance, exclusive of field artillery, in the fortifications and coast defences, shall remain in their emplacements for the term of six months, to be reckoned from the exchange of ratifications of the treaty; and the United States may, in the meantime, purchase such material from Spain, if a satisfactory agreement between the two Governments on the subject shall be reached.

ARTICLE VI.

Spain will, upon the signature of the present treaty, release all prisoners of war, and all persons detained or imprisoned for political offences, in connection with the insurrections in Cuba and the Philippines and the war with the United States.

Reciprocally the United States will release all persons made prisoners of war by the American forces, and will undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines. The Government of the United States will at its own cost return to Spain and the Government of Spain will at its own cost return to the United States, Cuba, Porto Rico, and the Philippines, according to the situation of their respective homes, prisoners released or caused to be released by them, respectively, under this article.

ARTICLE VII.

The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.

The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

ARTICLE VIII.

In conformity with the provisions of articles I., II. and III. of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civil bodies, or any other associations having

colocadas en las fortificaciones y en las costas, quedaran en sus emplazamientos por el plazo de seis meses a partir del canje de ratificaciones del presente tratado, y los Estados Unidos podran durante ese tiempo comprar a Espana dicho material si ambos Gobiernos llegan a un acuerdo satisfactorio sobre el particular.

ARTICULO VI.

Espana al ser firmado el presente tratado, pondra en libertad a todos los prisioneros de guerra y a todos los detenidos o presos por delitos politicos a consecuencia de las insurrecciones en Cuba y en Filipinas y de la guerra con los Estados Unidos.

Reciprocamente los Estados Unidos pondran en libertad a todos los prisioneros de guerra hechos por las fuerzas americanas y gestionaran la libertad de todos los prisioneros espanoles en poder de los insurrectos de Cuba y Filipinas.

El Gobierno de los Estados Unidos transportara por su cuenta a Espana, y el Gobierno de Espana transportara por su cuenta a los Estados Unidos, Cuba, Puerto Rico y Filipinas, con arreglo a la situacion de sus respectivos hogares, los prisioneros que pongan o que hagan poner en libertad respectivamente, en virtud de este articulo.

ARTICULO VII.

Espana y los Estados Unidos de America renuncian mutuamente por el presente tratado a toda reclamacion de indemnizacion nacional o privada de cualquier genero de un Gobierno contra el otro o de sus subditos o ciudadanos contra el otro Gobierno, que pueda haber surgido desde el comienzo de la ultima insurreccion en Cuba, y sea anterior al canje de ratificaciones del presente tratado, asi como a toda indemnizacion en concepto de gastos ocasionados por la guerra.

Los Estados Unidos juzgaran y resolvian las reclamaciones de sus ciudadanos contra Espana a que renuncia en este articulo.

ARTICULO VIII.

En cumplimiento de lo convenido en los Articulos I., II., y III. de este tratado, Espana renuncia en Cuba y cede en Puerto Rico y en las otras Islas de las Indias Occidentales, en la Isla de Guam, y en el Archipelago de las Filipinas, todos los edificios, muelles, cuarteles, fortalezas, establecimientos, vias publicas y demas bienes inmuebles que con arreglo a derecho son del dominio publico y como tal corresponden a la Corona de Espana.

Quedo por lo tanto declarado que esta renuncia o cesion, segun el caso, a que se refiere el parrafo anterior, en nada puede mermar la propiedad o los derechos que correspondan con arreglo a las leyes al poseedor pacifico, de los bienes de todas clases de las provincias, municipios, establecimientos publicos o privados, corporaciones civiles o eclesiasticas, o de cualesquiera otras colectividades que tienen per-

legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

ARTICLE IX.

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

ARTICLE X.

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

sonalidad jurídica para adquirir y poseer bienes en los mencionados territorios renunciado o cedidos, y los de los individuos particulares cualquiera que sea su nacionalidad.

Dicha renuncia o cesion, segun el caso, incluye todos los documentos que se refieran exclusivamente a dicha soberania renunciada o cedida, que existan en los Archivos de la Peninsula.

Cuando estos documentos existentes en dichos Archivos solo en parte correspondan a dicha soberania, se facilitaran copias de dicha parte, siempre que sean solicitadas. Reglas analogas habran reciprocamente de observarse en favor de Espana, respecto de los documentos existentes en los Archivos de las Islas antes mencionadas.

En las antecitadas renuncia o cesion, segun el caso, se hallan comprendidos aquellos derechos de la Corona de Espana y de sus Autoridades sobre los Archivos y Registros oficiales, asi administrativos como judiciales, de dichas Islas que se refieran a ellas y a los derechos y propiedades de sus habitantes. Dichos Archivos y Registros deberan ser cuidadosamente conservados, y los particulares sin excepcion tendran derecho a sacar, con arreglo a las leyes, las copias autorizadas, de los contratos, testamentos y demas documentos que formen parte de los protocolos notariales o que se custodien en los archivos administrativos o judiciales, bien estos se hallen en Espana o bien en las Islas de que se hace mencion anteriormente.

ARTICULO IX.

Los subditos espanoles, naturales de la Peninsula residentes en el territorio cuya soberania Espana renuncia o cede por el presente tratado, podran permanecer en dicho territorio o marcharse de el, conservando en uno u otro caso todos sus depechos de propiedad, con inclusion del derecho de vender o disponer de tal propiedad o de sus productos; y ademas tendran el derecho de ejercer su industria, comercio, o profesion, sujetandose a este respecto a las leyes que sean aplicables a los demas extranjeros. En el caso de que permanezcan en el territorio, podran conservar su nacionalidad Espanola haciendo ante una oficina de registro, dentro de un ano despues del cambio de ratificaciones de este tratado, una declaracion de su proposito de conservar dicha nacionalidad, a falta de esta declaracion, se considerara que han renunciado dicha nacionalidad y adoptado la del territorio en el cual pueden residir.

Los derechos civiles y la condicion politica de los habitantes naturales de los territorios aqui cedidos a los Estados Unidos se determinaran por el Congreso.

ARTICULO X.

Los habitantes de los territorios cuya soberania Espana renuncia o cede, tendran asegurado el libre ejercicio de su religion.

ARTICLE XI.

The Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong.

ARTICLE XII.

Judicial proceedings pending at the time of the exchange of ratification of this treaty in the territories over which Spain relinquishes or cedes her sovereignty shall be determined according to the following rules:

1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending, or in the court that may be substituted therefor.

3. Criminal actions pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose.

ARTICLE XIII.

The rights of property secured by copyrights and patents acquired by Spaniards in the Island de Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty.

ARTICLE XIV.

Spain shall have the power to establish consular officers in the ports and places of the territories, the sovereignty over which has been either relinquished or ceded by the present treaty.

ARTICLE XV.

The Government of each country will, for the term of ten years, accord to the merchant vessels of the other country the same

ARTICULO XI.

Los españoles residentes en los territorios cuya soberanía cede o renuncia España por este tratado, estarán sometidos en lo civil y en lo criminal a los tribunales del país en que residan con arreglo a las leyes comunes que regulen su competencia, pudiendo comparecer ante aquellos en la misma forma y amparando los mismos procedimientos que deban observar los ciudadanos del país a que pertenezca el tribunal.

ARTICULO XII.

Los procedimientos judiciales pendientes al canjearse las ratificaciones de este tratado, en los territorios sobre los cuales España renuncia o cede su soberanía, se determinarán con arreglo a las reglas siguientes:

1. Las sentencias dictadas en causas civiles entre particulares o en materia criminal antes de la fecha mencionada, y contra las cuales no haya apelación o casación con arreglo a las leyes españolas, se considerarán como firmes y serán ejecutadas en debida forma por la Autoridad competente en el territorio dentro del cual dichas sentencias deban cumplirse.

2. Los pleitos civiles entre particulares que en la fecha mencionada no hayan sido juzgados, continuarán su tramitación ante el tribunal en que se halle el proceso, o ante aquel que lo sustituya.

3. Las acciones en materia criminal pendientes en la fecha mencionada ante el Tribunal Supremo de España contra ciudadanos del territorio que según este tratado deja de ser español, continuarán bajo su jurisdicción hasta que recaiga la sentencia definitiva; pero una vez dictada esa sentencia, su ejecución será encomendada a la Autoridad competente del lugar en que la acción se suscito.

ARTICULO XIII.

Continuarán respetándose los derechos de propiedad literaria, artística e industrial adquiridos por españoles en las Islas de Cuba y en las de Puerto Rico, Filipinas y demás territorios cedidos, al hacerse el canje de las ratificaciones de este tratado. Las obras españolas científicas, literarias y artísticas, que no sean peligrosas para el orden público en dichos territorios, continuarán entrando en los mismos con franquicia de todo derecho de aduana por un plazo de diez años a contar desde el canje de ratificaciones de este tratado.

ARTICULO XIV.

España podrá establecer Agentes Consulares en los puertos y plazas de los territorios cuya renuncia y cesión es objeto de este tratado.

ARTICULO XV.

El Gobierno de cada país concederá, por el término de diez años a los buques mercantes del otro el mismo trato en cuanto a

treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as it accords to its own merchant vessels, not engaged in the coastwise trade.

This article may at any time be terminated on six months notice given by either Government to the other.

ARTICLE XVI.

It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will, upon the termination of such occupancy, advise any Government established in the island to assume the same obligations.

ARTICLE XVII.

The present treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen Regent of Spain; and the ratification shall be exchanged at Washington within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Paris, the tenth day of December, in the year of Our Lord one thousand eight hundred and ninety-eight.

(Seal)	WILLIAM R. DAY.
(Seal)	CUSHMAN K. DAVIS.
(Seal)	WILLIAM P. FRYE.
(Seal)	GEO. GRAY.
(Seal)	WHITELOW REID.

todos los derechos de puerto, incluyendo los de entrada y salida, de faro y tonelaje, que concede a sus propios buques mercantes no empleados en el comercio de cabotaje.

Este artículo puede ser denunciado en cualquier tiempo dando noticia previa de ello cualquiera de los dos Gobiernos al otro con seis meses de anticipación.

ARTICULO XVI.

Queda entendido que cualquiera obligación aceptada en este tratado por los Estados Unidos con respecto a Cuba, esta limitada al tiempo que dure su ocupación en esta Isla, pero al terminar dicha ocupación aconsejarán al Gobierno que se establezca en la Isla que acepte las mismas obligaciones.

ARTICULO XVII.

El presente tratado será ratificado por Su Majestad la Reina Regente de España y por el Presidente de los Estados Unidos de acuerdo y con la aprobación del Senado; y las ratificaciones se canjearán en Washington dentro del plazo de seis meses desde esta fecha, o antes si posible fuese.

En fe de lo cual, los respectivos Plenipotenciarios firman y sellan este tratado.

Hecho por duplicado en París a diez de Diciembre del año mil ochocientos noventa y ocho.

(Seal)	EUGENIO MONTERO RIOS.
(Seal)	B. DE ABARZUA.
(Seal)	J. DE GARNICA.
(Seal)	W. R. DE VILLA-URRUTIA.
(Seal)	RAFAEL CERERO.



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